

1                   UNITED STATES DISTRICT COURT  
2                   DISTRICT OF MASSACHUSETTS

3  
4       UNITED STATES OF AMERICA,                   )  
5    )  
6    Plaintiff,    ) Criminal Action  
7       vs.    )  
8       KING BELIN,                                      )  
9   Defendant.    )

10                   BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

11

12                   JURY TRIAL DAY 2

13

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15                   John Joseph Moakley United States Courthouse  
16    Courtroom No. 2  
17    One Courthouse Way  
18    Boston, MA 02210

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PROCEEDINGS

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THE CLERK: All rise. United States District Court  
for the District of Massachusetts is now in session, the  
Honorable F. Dennis Saylor presiding. You may be seated. This  
is in the matter of United States vs. King Belin, Criminal  
Matter 13-10048.

7

Counsel, would you please identify yourself for the  
record.

9

MR. WORTMANN: Your Honor, John Wortmann for the  
United States, good morning.

11

THE COURT: Good morning.

12

MR. GARRITY: Good morning, your Honor, Paul Garrity  
for King Belin.

14

THE COURT: Good morning. Welcome back. I hope you  
had a good holiday. I received and read the government's  
memorandum regarding admissibility of booking sheets and  
fingerprint cards, and the government also supplied me with a  
new exhibit list and exhibit booklet.

19

MR. WORTMANN: Your Honor, for the record, Mr. Garrity  
has the same thing.

21

THE COURT: Okay. All right. Is there anything  
requiring my attention this morning? Yes, Mr. Garrity.

23

MR. GARRITY: Judge, the only issue I have with  
respect to the government's memorandum on the fingerprint card,  
I would object on confrontation clause grounds.

1                   THE COURT: All right. Crawford-type grounds; is that  
2 the idea?

3                   MR. GARRITY: Yes, your Honor.

4                   THE COURT: All right. I would expect to -- are you  
5 going to introduce that today; is that the idea?

6                   MR. WORTMANN: I am actually planning on introducing  
7 all the business records first thing, your Honor, just so that  
8 they can get in.

9                   THE COURT: All right. In that case, I'm going to  
10 overrule the objection and admit the fingerprint cards,  
11 assuming, of course, that they come in as the government has  
12 represented, obviously.

13                  MR. WORTMANN: I provided both you and Mr. Garrity  
14 with copies of the keeper of the records certifications.

15                  THE COURT: All right.

16                  MR. GARRITY: Judge, just to expand on the objection,  
17 I make it based on the fact that it's asserting a fact. It was  
18 produced by the police department. Arguably, there's an issue  
19 with respect to the rules of evidence and the exception of the  
20 police records, but the item is not based on that, it's based  
21 on Fourth Amendment, I mean, excuse me, Sixth Amendment  
22 confrontation clause grounds that a fact is being asserted that  
23 I won't be able to cross-examine.

24                  THE COURT: All right. With regard to the Sixth  
25 Amendment objection, the information in question is not

1 testimonial. Again, assuming that the government's  
2 representations as to both the nature of the fingerprint cards  
3 and the underlying foundational evidence is correct, they are  
4 records that are created routinely upon arrest. They don't  
5 require any particular discretion or judgment or testimony.  
6 There's no analysis involved.

7 They are a collection of objective information in  
8 what's effectively a ministerial fashion, and assuming that the  
9 appropriate foundation is laid, they are records of a regularly  
10 conducted activity under Rule 803(6) and can be authenticated  
11 under Rule I guess it's 902(11) as public records as well.

12 MR. WORTMANN: Yes, your Honor.

13 THE COURT: All right. So I rule both the  
14 constitutional objection and the evidentiary, that is, the  
15 rules of evidence objection.

16 MR. GARRITY: Thank you.

17 THE COURT: I'm sorry, go ahead.

18 MR. WORTMANN: I apologize, your Honor, I'm sorry.

19 THE COURT: No, go ahead. Mr. Wortmann, how long do  
20 you expect your opening to be?

21 MR. WORTMANN: Probably about 20 minutes, your Honor.

22 THE COURT: Do you expect to open now?

23 MR. GARRITY: I do, your Honor.

24 THE COURT: And yours?

25 MR. GARRITY: If it's five minutes, Judge, that will

1       be long.

2                    MR. WORTMANN: Your Honor, I have a feeling things  
3       might go quickly today.

4                    THE COURT: Yes.

5                    MR. WORTMANN: I have six of the eight witnesses  
6       coming in. If we end up running short, I didn't want to -- I  
7       have two witnesses left, fingerprint experts, and I have them  
8       signed up for tomorrow.

9                    THE COURT: I never understood when I was a lawyer how  
10      Judges got upset if we were ahead of schedule. If it moves  
11      faster than you think, again, I don't want to send the jury  
12      home after two hours.

13                  MR. WORTMANN: No, no, and I don't think that would be  
14      the case. I just wanted to give your Honor a heads-up because  
15      I obviously want to use the Court's time and the jury's time  
16      efficiently.

17                  THE COURT: I understand. The question it raises, if  
18      we move very fast such that the jury would get the case  
19      tomorrow, we need to have our charge conference this afternoon,  
20      and we'll see where we are at the end of the day.

21                  MR. WORTMANN: And if we could do it at 8:30 tomorrow  
22      morning, your Honor, because I can't imagine it would be  
23      terribly -- I mean --

24                  THE COURT: That may be true, but at least I'd have a  
25      preliminary conference to ascertain that there isn't much to

1 argue about. All right. Anything else? The jurors are  
2 trickling in at last report. It's a little chaotic downstairs.

3 MR. WORTMANN: There's a surprise.

4 THE COURT: They seem to be arriving. I heard the  
5 lead story on the news today was the jury selection begins in  
6 federal court, and I thought they were talking about the  
7 King Belin case, but it turns out they weren't. We already  
8 selected the jury.

9 MR. GARRITY: Likewise, your Honor, the news  
10 reporters, they weren't looking at me.

11 MR. WORTMANN: You know, your Honor, I'm perfectly  
12 happy they're not.

13 THE COURT: I'm very content to have -- I don't mean  
14 to demean the case in any way but perfectly happy to have an  
15 ordinary case as opposed to a difficult and extraordinary case.  
16 All right. Unless there's anything anybody else wants to  
17 raise, I will be back in the robing room for the next 20  
18 minutes or so, and as soon as we have all 14 people, we'll  
19 bring everyone out.

20 THE COURT: Do you know, is the defendant present?

21 MR. GARRITY: I believe he is, Judge. I dropped some  
22 clothes off for him, and they didn't say he wasn't there, so I  
23 believe he is in the building.

24 MR. WORTMANN: Thank you, your Honor.

25 THE COURT: I will bring the jury out and start, I'll

1 welcome them, and we'll get right into the opening statements.

2 THE CLERK: All rise for the jury.

3 (JURORS ENTERED THE COURTROOM.)

4 THE CLERK: Thank you. Please be seated. The United  
5 States District Court is now in session, the honorable  
6 F. Dennis Saylor presiding. This is in the matter of the  
7 United States vs. King Belin, Criminal Matter Number 13-10048.  
8 Counsel, will you please identify yourself for the record.

9 MR. WORTMANN: Your Honor, good morning, John Wortmann  
10 for the United States.

11 THE COURT: Good morning.

12 MR. GARRITY: Good morning, your Honor, Paul Garrity  
13 for King Belin.

14 THE COURT: Good morning. Good morning, ladies and  
15 gentlemen. Welcome back. I hope you had a great holiday and  
16 happy new year. I hope those of who are fans watched a lot of  
17 football. My wife made some comments that perhaps I had  
18 watched enough, which is not what I wanted to hear, but we are  
19 going to begin today with opening statements.

20 The government is going to open first. Mr. Garrity  
21 has indicated he'll open as well for the defense. Again, what  
22 you hear in the openings is not itself evidence, it's a summary  
23 of what the government or the parties expect the evidence will  
24 be in the trial, and then we'll begin with the government's  
25 witnesses.

All right. Whenever you're ready, Mr. Wortmann.

2 MR. WORTMANN: Thank you, your Honor.

## OPENING STATEMENT

4 MR. WORTMANN: Ladies and gentlemen, good morning.

ALL JURORS: Good morning.

6 MR. WORTMANN: As I've told you a couple of times, my  
7 name is John Wortmann. I'm an Assistant United States  
8 Attorney, and I will have the privilege of representing the  
9 United States of America in its prosecution of its claim  
10 against King Belin.

Over the course of this trial, and it's only going to last a couple or three days, as Judge Saylor has already told you, the government will prove to you and prove to you beyond a reasonable doubt that King Belin, the man sitting right over there in the white shirt and the blue tie, on September 17th, 2012, Mr. Belin violated federal law, that is, Section 922(g)(1), which prohibits somebody who has previously been convicted of a felony, that is, a crime punishable for a period in excess of one year for possessing a firearm or ammunition.

21 And that, ladies and gentlemen, is exactly what  
22 King Belin did on September 17th, 2012 in the area of  
23 Norfolk Park in Mattapan, not just any gun but this one, a  
24 Ruger P95DC semiautomatic, not just any ammunition, but this  
25 ammunition, the eleven rounds that were in the gun, including

1       one round in the chamber, and these five additional rounds of  
2       ammunition that were found in one of his pockets inside a  
3       cigarette pack wrapped up in a plastic bag, that plastic bag,  
4       this gun, this ammunition.

5           And over the course of the trial, you're going to hear  
6       testimony from the individuals who were involved in this case,  
7       and at the end, I'm going to ask you to come back and return a  
8       verdict of guilty, a verdict of guilty because the evidence  
9       will show you, I submit, that King Belin is guilty of the  
10      offense charged, that is, being a felon in possession of the  
11      firearm and ammunition.

12           Well, that's really easy to say, isn't it, but the  
13       real question and the only question that matters for you is how  
14       are we going to prove it? Well, it won't be based on anything  
15       that I say or anything that Mr. Garrity says because as you've  
16       already heard from Judge Saylor, what the lawyers say isn't  
17       evidence.

18           No, ladies and gentlemen, the government is going to  
19       prove its case to you from one place and one place only, that  
20       witness stand right there where you'll hear the testimony of  
21       Officer Phillip Bissonnette and Officer Thomas Quinn, two of  
22       the officers who secured Mr. Belin, you know, in the area of  
23       Norfolk Park after he vigorously resisted Officer Bissonnette's  
24       efforts to pat frisk him, that is, pat the outside of him, and  
25       as Officer Bissonnette pulled the firearm from Mr. Belin's

1       waist and other officers pulled a package of cigarettes that  
2       contained the additional five rounds of ammunition from his  
3       pocket, on his person, in his waistband, in his pocket, that's  
4       where this gun and firearm were.

5                  That testimony will also include evidence from  
6       officers at the Boston Police Firearm Section who test fired  
7       the gun to make sure that it was in fact a firearm, that is in  
8       the words of the statute, a weapon that's capable of expelling  
9       a projectile by reason of explosive force, that's how Congress  
10      defined it, who will tell you that the ammunition, all 16  
11      rounds were certified.

12                 You'll also hear testimony from an ATF agent who is  
13      what's known as an interstate commerce expert, and one of the  
14      elements of the crime that Judge Saylor is going to tell you  
15      about is that the gun has to have a relationship to interstate  
16      commerce, which is generally proven simply by showing that at  
17      any time from the day it was manufactured to the day it was  
18      recovered from his waistband in Mattapan that it crossed an  
19      interstate line or an international boundary.

20                 How did it prove that? Well, Special Agent Kelsch  
21      will tell you that this gun and all of this ammunition was  
22      manufactured outside of Massachusetts based on stamps that are  
23      required to be put on it, therefore, by necessity in order to  
24      get to Massachusetts, it had to cross a state line, and,  
25      finally, you'll hear testimony and see exhibits showing that in

1 fact prior to September 17th, 2012, Mr. Belin had been  
2 convicted of a crime punishable for more than a year, another  
3 of the elements of the crime, and you'll see the conviction.

4 You'll hear from his probation officer, you'll see the  
5 booking sheet that matches up with the conviction, so what I'd  
6 like to do for the next 10 minutes or so is tell you a little  
7 bit more about what I anticipate all these witnesses will  
8 testify to, again, not because what I say is evidence, you know  
9 that it's not, but in the hopes that it will assist you in  
10 understanding the case as it comes in.

11 Like every case, this case has a beginning, and the  
12 beginning of the case really takes place on September 17th,  
13 2012. It was a summer day. You'll hear from  
14 Officer Bissonnette that it was warm and sufficiently warm that  
15 he has specific recollection of wearing a shirt with a peace  
16 sign on it and a pair of khaki shorts as he went out to work  
17 the first half shift, which in the Boston Police Department  
18 starts from about 4:45 and ends at 11:45 p.m., and he and his  
19 partner, Officer Thomas Finn, were working out of District B-3,  
20 which covers lower Dorchester and Mattapan.

21 They were working in what's known as a K car, which is  
22 a plain clothes assignment, so they were not in uniform, they  
23 were not driving a marked unit, and I already told you that  
24 Bissonnette had a T-shirt and shorts on, Finn was in plain  
25 clothes, and they drive a Crown Victoria, which has antennas on

1       it and is generally recognized as a police vehicle on the  
2       street but which is not one of the blue and white units you  
3       see.

4                 They also always wear their badge on the outside  
5       either around their neck or tucked into their belt, and the K  
6       car, the plain clothes assignment is different in that they can  
7       be a little more selective about the calls they respond to, and  
8       their job is generally aimed at more serious potential  
9       offenses, and you're going to learn that about 6:45 Bissonnette  
10      and Finn were on -- excuse me, ladies and gentlemen.

11               THE COURT: Do you all have a screen that works that  
12       shows an image? Okay. Sometimes for no reason that anyone can  
13       tell, some of the screens will go blank. Let us know if that  
14       happens, and we'll try to move you around so you all have an  
15       active screen.

16               MR. WORTMANN: Everyone working?

17               THE COURT: You've got a blank one. Standard computer  
18       advice, reboot.

19               MR. WORTMANN: When in doubt, reboot.

20               THE COURT: Any luck? Are you able to see, can you  
21       move your chair and try to see the one? Will that work? Can  
22       you see? We can put you in different chairs, if need be.

23               MR. WORTMANN: It's 6:45 at night, Bissonnette and  
24       Finn are in this unmarked cruiser. They're on Norfolk Street,  
25       which is this road right here, but they're up out of the

1 picture. Bissonnette's driving, and they're on their way to a  
2 call for a person who's being troublesome in a group home, and  
3 while they're driving, another call comes in, and that call is  
4 for initially a fight at Norfolk Park, later then it's changed  
5 or it morphs, it's not clear.

6 There are two groups of girls that might be fighting  
7 in Norfolk Park, and Bissonnette, who's very familiar with  
8 Norfolk Park, realizes that this is a higher priority item, so  
9 he changes his direction and drives down and then turns into  
10 Mildred Avenue, and you can see Norfolk Park, we've got some  
11 basketball courts, a tennis court, there's a tot lot you'll see  
12 right here in the pictures, and this is a field in which they  
13 play a lot of soccer and do some other things, and this is  
14 where right on Mildred, this is just past the intersection of  
15 Norfolk Street and Mildred Avenue, which is where Bissonnette's  
16 car comes to a stop, and that's the passenger door through  
17 which Officer Finn got out.

18 As they're coming into the park that day, ladies and  
19 gentlemen, they see the usual activity, there's people playing,  
20 there's kids, but as they walk, they see coming towards them a  
21 group of four or five guys, and they make a decision that  
22 they're going to talk to these guys, not because they've seen  
23 them do anything wrong, not because they think they've done  
24 anything wrong but just to find out have you seen anything, did  
25 you see anybody fighting, did you see some groups of girls,

1 things that police officers do every day in order to figure out  
2 if, in fact, there's a problem.

3 So they pull into Mildred right on that spot, Finn  
4 gets out, he gets out quickly, and he walks right over and  
5 starts talking to the group. Officer Bissonnette, who's  
6 driving the car, takes a little bit longer to get out because  
7 he's got to turn it off and take care of the car, and it turns  
8 out he never gets over there. The reason he never gets over  
9 there is because when he stands up and gets out of the car, he  
10 sees some things that concern him.

11 What were they? What Bissonnette saw was that one  
12 member of this group doesn't stay with the group when Finn  
13 comes walking over. One member of the group peels off and  
14 starts walking right down Mildred heading towards the park in  
15 that general direction, and it's curious because it appears  
16 that that person didn't want to talk to the police, but, in  
17 addition, Officer Bissonnette notices three things.

18 First, that young man who is King Belin has a big  
19 black baggy hoodie on despite from Officer Bissonnette's  
20 perception the relative warmth of the evening, and he'll tell  
21 you that it's the kind of clothing that people wear when they  
22 don't want bulges to be seen, when they may have something in  
23 their waist or in their pockets that they don't want the police  
24 to see.

25 Second, that Mr. Belin was walking quickly with his

1 head down not looking at anyone, even though this police car  
2 had just pulled up, and the third thing that Bissonnette sees,  
3 it's that it's King Belin, who he knows from the street, and,  
4 in fact, who he had arrested several years earlier, which  
5 arrest you'll learn resulted in the conviction of two offenses  
6 for felonies, that is, crimes punishable for a period in excess  
7 of one year, an element of the offense that's all it's there  
8 for.

9 So, does Bissonnette go walking over to the group?  
10 No, because this is more of concern to him, where it's someone  
11 that obviously doesn't want to talk to the police. He sees  
12 Mr. Belin, and he calls out to him. He says, "Yo, King, what's  
13 up?" What does Mr. Belin do? He keeps walking. He keeps his  
14 head down. At one point, he looks over, he smiles a little  
15 bit. Bissonnette decides to follow him. He quickly catches  
16 up.

17 As he gets closer to him, Mr. Belin actually turns  
18 around and faces Bissonnette, and that's when Bissonnette asks  
19 Mr. Belin the question, and the question is, "King, Do you have  
20 anything on you that I should know about?"

21 Bissonnette will tell you he asks this question all  
22 the time, and on that particular day, he asked for two reasons:  
23 One, because sometimes people answer him and say, well, as a  
24 matter of fact, I have this, but almost more importantly, he's  
25 looking to see the reaction.

1           People who have something on them tend to be nervous.  
2        People who are nervous react in certain, you know, definable,  
3        repetitive ways, so he says, "Do you got anything on you?" And  
4        he's watching Mr. Belin, and what does he see, ladies and  
5        gentlemen? First, that smile that he saw earlier, all of a  
6        sudden, his face has become lowered, it becomes crest-fallen.  
7        All of a sudden, he's breathing heavily, and he's looking over  
8        his shoulder, and he actually starts to back up a ways, and  
9        Bissonnette thinks he's going to run.

10           So, what does he do? He makes the decision he's going  
11        to perform a pat frisk because he's concerned there might be a  
12        weapon involved, and, again, the pat frisk is nothing more than  
13        a patting down the outside of somebody's clothes to see if  
14        there's any unusual bulges or items that could be weapons that  
15        could be dangerous either to the officer or to the person who  
16        has them.

17           And what happens when Bissonnette goes to perform the  
18        pat frisk? He reaches out with his hands and goes into the  
19        waist, and what does Mr. Belin do? He immediately goes for his  
20        own waist. Bissonnette will tell you that was of significant  
21        concern to him.

22           Bissonnette was able to grab Mr. Belin's hands, bring  
23        them up to the waist, and he's telling him, "King, relax, I  
24        just want to frisk. You know, you know me, if you don't have  
25        anything, it's no problem, relax, relax your arms, and just let

1 me do this."

2 And what happens, it only increases Mr. Belin's  
3 resistance as he continues to try to get his hands down by his  
4 waist. Now, by this time other officers have come onto the  
5 scene, and ultimately three other officers come over to assist,  
6 including Officer Finn, Officer Bissonnette's partner, and the  
7 more people that come, the more resistance there is from  
8 Mr. Belin, and ultimately they end up backing up right onto  
9 that electrical panel that you see there.

10 By this time, Officer Finn is joined, and while  
11 they're over there, and Mr. Belin is crouched down like this  
12 trying to go for his waist again, ultimately all of them go  
13 onto the ground, and being on the ground enables them to get  
14 control of Mr. Belin's hands and arms, which is what the whole  
15 thing is all about so that everybody is going to be safe.

16 They get his arms, they handcuff him, and as  
17 Officer Bissonnette rolls him over, the hoodie part rolls up,  
18 and what does he see? Obviously, the magazine was in, but he  
19 sees this gun tucked in his waistband. He removes the gun, he  
20 yells, "gun," Mr. Belin's placed under arrest, he's searched on  
21 scene, and one of the officers whose -- two of the officers who  
22 were doing, assisting in the search of Mr. Belin, Officer Velez  
23 and Officer Finn, who you'll hear from, and Officer Finn will  
24 tell you that he saw Officer Velez take a cigarette pack out of  
25 the front pocket of Mr. Belin, and Velez hands it to Finn, and

1 Finn notices something. It's much too heavy for cigarettes.  
2 He opens it up, and what does he see but a plastic bag with  
3 five more bullets. The plastic bag, five more bullets.

4 Well, once the firearm is recovered, there are certain  
5 procedures that are followed at the Boston Police Department.  
6 The first one is to get detectives on scene, and it's the job  
7 of the detectives to photograph the scene, photograph the gun,  
8 take the gun, make it safe, and that is to make sure that  
9 there's not a round in the chamber that could accidentally go  
10 off, and then they're responsible for going down, taking the  
11 gun, and after fuming the gun, and you'll hear a little bit  
12 about that.

13 And basically all fuming is, they have like a fish  
14 tank down at the district, and there's a heating element in it,  
15 and you put Super Glue on the heating element, and you put the  
16 gun in the magazine, and you heat it up, and fumes are formed,  
17 and those fumes deposit on the gun, and it helps to accentuate  
18 and stabilize any fingerprints that might be on the gun, and  
19 that's one of the things that Officer Kevin Magoon did that  
20 night after he had made the gun safe, that is, by removing the  
21 round that was in the chamber and the 10 rounds that were in  
22 the magazine of the gun.

23 And he will tell you how he did all these things, he  
24 prepared a box, put the gun and the magazine and the ammunition  
25 into it, and it got to sent up to other groups within the

1 Boston Police Department for further evaluation.

2 One of those is, is it a real gun, and you will hear  
3 from Firearms Examiner Nina Jefferson who will tell you that  
4 she took this gun, she put a bullet into it, she cocked it  
5 back, I believe she did it twice, and fired it into what they  
6 have, which is a large tank of water, and when she pulled the  
7 trigger with ammunition in it, the gun went off, meaning that  
8 is in fact a firearm.

9 She also examined the ammunition, certified it that it  
10 is in fact ammunition. It was then sent to the latent print  
11 unit which further processed the gun, and they were able to  
12 locate two things: First, they were able to locate a  
13 fingerprint of Mr. Belin's left thumbprint on the magazine;  
14 and, secondly, they were also able to find and locate and  
15 identify a fingerprint that was Mr. Belin's left thumbprint off  
16 of the bag that contained the five rounds of ammunition that  
17 were in his pocket, so ballistics, latents.

18 And, lastly, you'll hear from Officer Kelsch, ladies  
19 and gentlemen, with respect to the gun, who will tell you that,  
20 as I have indicated, it was manufactured outside of  
21 Massachusetts, meaning that it has the necessary nexus with  
22 interstate commerce.

23 Finally, ladies and gentlemen, you'll also hear from  
24 Brandon McClellan, who is a probation officer who currently  
25 works in Brockton but who used to work in Suffolk County, and

1 he will tell that you in 2010, 2011, he was working in Suffolk  
2 Superior Court and that he was responsible for supervising  
3 King Belin while he was on probation and while he was on  
4 probation for two convictions, both of which, the same two  
5 convictions that Officer Bissonnette arrested him for that were  
6 both crimes punishable for a period in excess of one year,  
7 okay, felon in possession of a firearm and ammunition.

8 You'll hear evidence as to every one of those elements  
9 from the people who did the work, from the people who recovered  
10 the gun, and at the end of the case, I will come back and ask  
11 you to find King Belin guilty because that I submit to you,  
12 respectfully, ladies and gentlemen, is what the evidence will  
13 show.

14 THE COURT: Thank you, Mr. Wortmann. Before we get to  
15 the defendant's or defense counsel opening, let me give you a  
16 caution. The fact that the defendant may have been arrested on  
17 an earlier occasion or convicted of a crime is relevant in  
18 certain narrow ways and may be considered by you as evidence.

19 I'll explain to you at the appropriate time what the  
20 limitations are on that evidence, but there's a danger here  
21 that you might conclude that because he may have been arrested  
22 before or may have been convicted of a prior crime that he must  
23 be a bad person or have a bad character and, therefore, he must  
24 be guilty of this crime.

25 You may not do that. That's improper and unfair. The

1 fact that someone committed a crime in the past or even  
2 multiple crimes does not mean that a person committed the crime  
3 with which he is charged.

4 This case has to be decided on its own facts, and you  
5 may not consider evidence that the defendant was arrested or  
6 convicted earlier as evidence that he somehow is a bad person  
7 or has a bad character, because he was convicted in the past,  
8 he must be guilty of this crime or that he's more likely to  
9 have committed this crime. You cannot convict the defendant on  
10 that basis. You may convict him only on the evidence in this  
11 case and the law as I instruct you at the end of the case.

12 With that, Mr. Garrity.

13 OPENING STATEMENT

14 MR. GARRITY: Thank you. Good morning. I know it's  
15 been a couple weeks, so I'm going to reintroduce myself. I  
16 already did that this morning when I said good morning to the  
17 Judge, but I'll do it again. My name is Paul Garrity. I  
18 represent King Belin.

19 What the prosecutor just told you is a promise of what  
20 he's going to produce, but it's a promise that's unlike any  
21 other promise that most of us make. It's a promise he has to  
22 keep to you beyond a reasonable doubt.

23 He's got to prove to you beyond a reasonable doubt  
24 that Mr. Belin knowingly possessed a firearm and knowingly  
25 possessed ammunition after having been convicted of a prior

1 offense, and I would suggest to you that the evidence you'll  
2 hear during the course of this trial will show it's a promise  
3 he can't keep, that there will be reasonable doubt, and that  
4 doubt will come in a number of forms. It will come from  
5 evidence that wasn't obtained by the police in this case.

6 You'll hear that Officer Bissonnette and Officer Finn  
7 go down Norfolk Street. They're responding to a fight, a radio  
8 call for a fight among girls on the corner of Norfolk Street  
9 and Fessenden Street across the street from where they pull  
10 into. They see four individuals walking down Norfolk Street  
11 and pull into not to Fessenden Street but onto Mildred Avenue  
12 for some reason, they pull into Mildred Ave., cut right in  
13 front of these five individuals.

14 You'll hear from Officer Bissonnette that he didn't  
15 really see these people for all that long a period of time, so  
16 he can't tell you whether they were all together. In any  
17 event, Mr. Belin walks in front of the cruiser. Within  
18 seconds, Officer Bissonnette is grabbing Mr. Belin and  
19 searching him.

20 What they don't do, what the police don't do is they  
21 do not interview the four other individuals to get a statement  
22 from them in terms of what they observed. The other officer  
23 that allegedly was involved with Officer Bissonnette in  
24 arresting and pushing Mr. Belin up against that brown box that  
25 you may have seen in that photograph, Officer Bridges, the

1 government, for whatever reason, won't produce him, won't call  
2 him to testify to you. He did not write a report, you'll hear.

3 You'll hear that Officer Velez, the officer who  
4 obtained supposedly this pack out of Mr. Belin's pocket, again  
5 allegedly, they won't call him, for whatever reason. He didn't  
6 write a report.

7 You'll hear that there were other individuals in the  
8 park. There's a playground right by where Mr. Belin was  
9 arrested and taken into custody. You'll hear from  
10 Officer Bissonnette and Officer Finn there were a number of  
11 individuals in that park. They do not interview them, they  
12 don't get statements from them in terms of what they may  
13 observed, and Officer Finn himself didn't see any of the  
14 interaction between Officer Bissonnette and Mr. Belin.

15 It's only Officer Bissonnette that will tell you his  
16 version of what supposedly took place, and you'll hear the  
17 version that was just given to you by the prosecutor won't  
18 match up in a number of ways with the report that was drafted  
19 in this case, and the report wasn't drafted by  
20 Officer Bissonnette, it was drafted by Officer Finn.

21 You'll hear that that didn't comply with the Boston  
22 Police Department procedures. Boston PD officers are given  
23 rules and procedures. You'll hear that they weren't complied  
24 with in a number of respects in this case.

25 You'll also hear that the officers did not get or try

1 to get access to videotape. There's a photograph you'll see  
2 during the course of this trial of Norfolk Park. Norfolk Park  
3 has the playground next to it. There's a couple of basketball  
4 courts. Next to that, there's a tennis court. In between the  
5 two basketball courts within a short distance of where  
6 Mr. Belin was arrested, there's a video camera. You'll see it  
7 in the photographs. The police did not attempt in any way to  
8 get video footage from that camera, so the only person you're  
9 going to be able to rely upon, if at all, is  
10 Officer Bissonnette.

11 You'll also hear that the Boston PD did not try to  
12 obtain DNA evidence off of the gun. They say that there's  
13 fingerprints. Well, they didn't try to get DNA off of it.  
14 You'll hear that the Super Gluing makes it easier to obtain  
15 DNA. They didn't make attempts to do that.

16 Again, you're going to hear that they didn't comply  
17 with their own procedures, and the fingerprints, I would  
18 suggest to you, is somewhat odd and overly convenient. It's  
19 odd in the fact that of all the fingerprints, they get two left  
20 thumbprints off of two items, the cartridge and the plastic bag  
21 that I submit you'll hear during the course of the trial don't  
22 ordinarily leave fingerprints.

23 So you're going to hear some I would submit to you  
24 somewhat odd and very convenient evidence for the government  
25 with respect to the fingerprints, and you'll hear other

1 evidence with respect to the fingerprints that will suggest to  
2 you should cause you to doubt the government's case, so  
3 sometimes things don't appear as they may seem on initial view.

4 In other words, pretty easy case for the government to  
5 argue to you: Mr. Belin's arrested, supposedly a gun and  
6 ammunition in his pocket, been previously convicted, piece of  
7 cake, convict him.

8 I would argue to you if you look behind the surface,  
9 look at what the police didn't do in this case, look at what  
10 they didn't obtain, what they won't present to you. I would  
11 submit to you that you're going to see that there's reasonable  
12 doubt in this case and that the government will not be able to  
13 keep their promise to you that they can prove to you beyond a  
14 reasonable doubt that Mr. Belin knowingly possessed the firearm  
15 and ammunition, and as a result at the end of this case, I'm  
16 going to ask that you find Mr. Belin not guilty. Thank you.

17 THE COURT: Thank you, Mr. Garrity. All right.

18 Mr. Wortmann.

19 MR. WORTMANN: Your Honor, may we move the podium out  
20 of the way?

21 THE COURT: Yes.

22 MR. WORTMANN: Thank you. Your Honor, before calling  
23 the first witness, I'd simply like to move a number of business  
24 records into evidence. The first such record is a certified  
25 copy of Superior Court Conviction 2009-10693, which has been

1 marked for identification as Exhibit 3, and I would offer that  
2 as Exhibit 3.

3 THE COURT: Exhibit 3. All right. Mr. Garrity.

4 MR. GARRITY: Can I have one second, your Honor?

5 THE COURT: Yes.

6 MR. GARRITY: No objection, your Honor.

7 THE COURT: All right. Exhibit 3 may be admitted.

8 (Exhibit No. 3 was admitted into evidence.)

9 MR. WORTMANN: Secondly, your Honor, are three booking  
10 sheets generated by the Boston Police Department. Exhibit 4.1  
11 is a booking sheet dated April 29th, 2009 in the name of  
12 King Belin, and I would offer that as Exhibit 4.1.

13 MR. GARRITY: No objection.

14 THE COURT: All right. It may be admitted,  
15 Exhibit 4.1.

16 (Exhibit No. 4.1 was admitted into evidence.)

17 MR. WORTMANN: Second is a booking sheet dated  
18 September 17th, 2012, which has been marked for identification  
19 as Exhibit 4.2.

20 MR. GARRITY: No objection.

21 THE COURT: All right. It may be admitted 4.2.

22 (Exhibit No. 4.2 was admitted into evidence.)

23 MR. WORTMANN: Third is a booking sheet dated  
24 September 10th, 2007, which has been marked for identification  
25 as Exhibit 8.1.

1                   THE COURT: Mr. Garrity.

2                   MR. GARRITY: No objection, your Honor.

3                   THE COURT: All right. It may be admitted 8.1.

4                   (Exhibit No. 8.1 was admitted into evidence.)

5                   MR. WORTMANN: Lastly, your Honor, a fingerprint card  
6                   of King Belin, Jr. dated September 10th, 2007, which has been  
7                   marked for identification as Exhibit 8.2.

8                   THE COURT: Mr. Garrity.

9                   MR. GARRITY: One second, your Honor.

10                  THE COURT: Yes.

11                  MR. GARRITY: Judge, just my prior objection.

12                  THE COURT: The objection is overruled. It may be  
13                  admitted 8.2.

14                  MR. WORTMANN: Thank you, your Honor. May I approach  
15                  the clerk, please?

16                  THE COURT: Yes.

17                  (Exhibit No. 8.2 was admitted into evidence.)

18                  MR. WORTMANN: Your Honor, the government calls  
19                  Officer Phillip Bissonnette to the stand.

20                  THE COURT: While he's doing that, let me give the  
21                  jury an instruction on the purposes for which you may use this  
22                  evidence. Again, the fact that the defendant may have been  
23                  arrested or convicted of a crime on an earlier occasion may be  
24                  relevant. It may be considered by you as evidence but only in  
25                  a narrow way. When people are arrested, it's customary for

1       them to be booked. The booking process normally includes the  
2       arrestee giving identifying information: name, date of birth.  
3       Normally they're photographed, normally they're fingerprinted.

4                  The government is, as I understand it, introducing  
5       evidence of booking sheets and fingerprint cards for the  
6       purpose of establishing identifying information about the  
7       defendant. In other words, the government seeks to show that  
8       the fingerprints found on the gun or the ammunition are the  
9       defendant's fingerprints.

10                 You can accept or reject that evidence as you see fit,  
11       but you may consider it again only for the purpose of  
12       identifying the defendant or connecting him to those  
13       fingerprints. Again, you may not consider that information as  
14       proof that the defendant is a bad person, has a bad character  
15       or the fact that he has been arrested in the past makes it more  
16       likely or more certain that he committed this crime.

17                 The government has also introduced evidence of a prior  
18       conviction. That's part of the offense here. Again, I'll give  
19       you instructions on this, but the gist of the offense is that  
20       if you have a previous conviction for a felony, for a crime  
21       that's punishable by more than one year in prison, you're not  
22       thereafter permitted to possess a firearm or ammunition.  
23       That's a crime, so the government is introducing evidence of  
24       the prior conviction in order to establish that the crime  
25       occurred.

1                   Again, there's a danger here that you might conclude  
2                   that because he was convicted in the past, he must be a bad  
3                   person, must have a bad character, must be more likely to have  
4                   committed this offense, and, again, you cannot do that. You  
5                   may consider it only for the limited purpose of establishing  
6                   that the defendant, in fact, did have a prior conviction before  
7                   he possessed the firearm or ammunition as the government  
8                   alleges.

9 All right. With that, you may take the stand, sir.

10 OFFICER BISSONNETTE: Good morning, your Honor.

11 MR. WORTMANN: Your Honor, may I recover the exhibits,  
12 please?

13 THE COURT: Yes.

14 PHILLIP BISSONNETTE, having been duly sworn by the  
15 Clerk, testified as follows:

DIRECT EXAMINATION

17 BY MR. WORTMANN:

18 Q. Good morning, sir. Could you tell us your name, please.

19 A. Good morning. My name is Officer Phillip Bissonnette.

20 Q. Where do you work, sir?

21 A. I work for the Boston Police Department.

22 Q. For how long?

23 A. Approximately seven and a half years.

24 Q. And approximately when did you get out of the academy?

25 A. Approximately December, 2007.

1 Q. And could you describe in a summary fashion the postings  
2 that you had since going out on the street as a sworn officer?

3 A. Sure. Upon graduating police academy, I worked for a  
4 couple months down at District 4 as a walking beat for the  
5 holidays. After that, I was transferred to District 3 which  
6 covers Dorchester, Mattapan.

7 Q. How long were you assigned to District B-3?

8 A. I was assigned there for five years.

9 Q. Where are you assigned now?

10 A. I'm currently assigned to Youth Violence Strike Force.

11 Q. How long have you been with Youth Violence Strike Force?

12 A. Just over two years.

13 Q. And focusing your attention on September 17th of 2012,  
14 where were you assigned?

15 A. At that time I was assigned to District 3.

16 Q. So that's before your transfer to the Youth Violence  
17 Strike Force?

18 A. Yes.

19 Q. And is that a transfer that you applied for?

20 A. It is.

21 Q. When you first got to District B-3, what were your duties?

22 A. When I first got to District 3, I was assigned to a  
23 uniform patrol, which is a more reactive patrol. By reactive  
24 patrol, I mean responding to 9-1-1 calls primarily.

25 Q. And over time, did your responsibilities change?

1 A. They did.

2 Q. How?

3 A. Eventually I was assigned to the anti-crime car, which is  
4 uniform patrol. It's more of a proactive patrol.

5 Q. And commonly referred to as the K car?

6 A. Yes.

7 Q. And that's an assignment that involves plain clothes?

8 A. Yes.

9 Q. Now, even when you're in plain clothes, do you wear  
10 anything indicating you're a police officer?

11 A. I do, I always have my badge around my neck. I also wear  
12 gun and other equipment around my belt.

13 Q. It's also an assignment that you do not use blue and white  
14 marked cruisers?

15 A. Correct.

16 Q. What kind of cars do you use?

17 A. We use, it's a Crown Victoria, but it's subdued. It still  
18 has lights and antennas and things like that.

19 Q. And how many shifts have you driven that kind of car  
20 around the streets of Boston?

21 A. For about the last five years.

22 Q. And fair to say that they are easily recognizable as  
23 police vehicles on the street?

24 A. Yes.

25 Q. Officer Bissonnette, if I can, I'd focus to you in on

1       September 17th of 2012, and let me ask first whether you were  
2 working that day?

3       A.     I was working.

4       Q.     And do you recall what your assignment was? Was that  
5 during the uniform portion of your time at B-3 or while you  
6 were in a K car?

7       A.     I was plain clothes, anti-crime car.

8       Q.     Did you have a partner that day?

9       A.     I did, Officer Thomas Finn.

10      Q.     What shift were you working?

11      A.     We were working the first half shift, which runs from  
12 4 p.m. to 11:45.

13      Q.     So you start at four in the afternoon, and it runs to  
14 almost midnight?

15      A.     Correct.

16      Q.     Do you recall what the weather was like that day?

17      A.     It was a typical warm September afternoon.

18      Q.     And do you recall, do you have a specific recollection as  
19 to how you were dressed that day?

20      A.     I do. That evening I was wearing a white T-shirt, it had  
21 a peace sign on it as well as khaki shorts.

22      Q.     And then your badge on a chain?

23      A.     Yes, around my neck.

24      Q.     And let me focus you on the time right around 6:45 p.m.  
25 Do you recall where you were?

1 A. I do. We were on Norfolk Street in Mattapan.

2 Q. And I'm going to put a chalk on the document camera and  
3 ask you, sir, first, do you recognize the area depicted by this  
4 aerial map?

5 A. I do, this is the area of Norfolk Street around  
6 Norfolk Park.

7 Q. Okay. I wonder if you could just outline for us the area  
8 that is Norfolk Park?

9 A. Sure, right in here. (Witness drawing on diagram)

10 Q. What kind of facilities are at Norfolk Park?

11 A. They have a tot lot, they also have a couple basketball  
12 courts, a tennis court and they have a large field.

13 Q. And the tot lot, could you just put a Number 1 on?

14 A. Sure, right there. (Witness drawing on diagram)

15 Q. Okay. That works. How about the two basketball courts?

16 A. Right here. (Witness drawing on diagram)

17 Q. And the tennis court?

18 A. (Witness drawing on diagram)

19 Q. The field is obviously the area below?

20 A. Yes, right here.

21 Q. And this large building that's just below the circle, do  
22 you know what that is?

23 A. That's the Mildred Ave. School.

24 Q. It's a middle school?

25 A. Yes.

1 Q. Okay. And fair to say that are you familiar with this  
2 area?

3 A. I am.

4 Q. From prior calls?

5 A. Yes.

6 Q. And as a general matter, especially during the summer  
7 months, is this facility used by a large number of people?

8 A. It is used by a large number of people, especially at that  
9 time of year, people from all ages.

10 Q. Now --

11 MR. WORTMANN: Your Honor, may I approach the witness  
12 just for a second, please?

13 THE COURT: Yes.

14 (Exhibit A was admitted into evidence.)

15 Q. I'm just going to ask you to look at these photos and ask  
16 you whether you recognize them to be fair and accurate  
17 depictions of the area around Norfolk Park as it appeared on  
18 September 17th, 2012?

19 A. Yes.

20 Q. Okay.

21 A. They are.

22 MR. WORTMANN: Your Honor, at this time I'd offer  
23 Exhibits 5.2 to 5.7 into evidence.

24 MR. GARRITY: No objection.

25 THE COURT: All right. Exhibits 5.2, 5.3, 5.4, 5.5,

1      5.6, 5.7 are admitted.

(Exhibit Nos. 5.2, 5.3, 5.4, 5.5, 5.6, 5.7 was  
admitted into evidence.)

4 MR. WORTMANN: Thank you.

5 Q. Do you know when these pictures were taken?

6 A. That night.

7 Q. Do you know who took them?

## 8      A.      Detective Magoon.

9 Q. So Exhibit 5.2 is just a sign a street sign located at  
10 that corner?

11 A. Yes.

12 Q. And could you explain, just put an X exactly what we are  
13 looking at?

14 A. Sure, it's actually right here where it's marked A, it  
15 would be that intersection there.

16 Q. Now, the road coming down there, what's the name of that  
17 street?

18 A. This here is Fessenden Street.

19 Q. And then immediately on the other side of Norfolk Street,  
20 does it change names?

21 A. Yes, that's Mildred Ave.

22 Q. Okay. And showing you what's been marked or introduced as  
23 Exhibit 5.3, do you recognize that picture?

24 A That's a picture of Norfolk Street in a north direction

25 Q. So we're looking -- we'd be looking into the city?

1 A. Yes.

2 Q. And can you just point out the areas of the park?

3 A. Sure, so back here you can see the basketball hoops, to  
4 the direct right would be where the tot lot is, and then  
5 further right would be the open field.

6 Q. And Exhibit 5.4, what do we see here?

7 A. This is Norfolk Street as well in the opposite direction.  
8 On the left here, you can see where the police cruisers are,  
9 that's Mildred Ave. and to the far left would be the tot lot.

10 Q. And where would the Mildred Ave. School be?

11 A. It would be like the left is going in here.

12 Q. And Exhibit 5.5?

13 A. That's a picture of the tot lot and Norfolk Park.

14 Q. And that's right at the corner of Mildred and Norfolk?

15 A. Yes.

16 Q. And, finally, for the moment photograph 5.6?

17 A. Here you can see inside the tot lot, you can see the  
18 slides, and there's like a little gazebo in the back, and on  
19 the left, you can see the basketball courts. To the right  
20 would be Mildred Ave. and the Mildred Ave. School.

21 Q. And the little road we see right at the bottom left-hand  
22 corner, that would be Norfolk Street?

23 A. Yes.

24 Q. Putting Exhibit A back on, so 6:45 you're on patrol with  
25 Officer Finn, and do you remember what you were doing, where

1 you were headed?

2 A. At that time we were headed to a radio call on Walk Hill  
3 Street.

4 Q. And what was the nature of that call, if you remember?

5 A. The nature of that call, it was a call to remove a guest  
6 from a group home, an unruly guest. We were on our way to that  
7 call.

8 Q. And did you make it to that call?

9 A. We did not.

10 Q. Why not?

11 A. We heard another call broadcast over the radio.

12 Q. And what's your recollection of that call?

13 A. It was a broadcast for a group fighting in the  
14 Norfolk Park area.

15 Q. Now, since the incident took place on September 17th, have  
16 you had an opportunity to go back and listen to the radio  
17 calls?

18 A. I have.

19 Q. And did you hear additional information that you don't  
20 recall picking up as you were out on the street that night?

21 A. Yes, after the initial call for the group fighting, it was  
22 updated as possible females fighting.

23 Q. And let me ask you, had you realized that it was a group  
24 of girls potentially fighting, would that have changed your  
25 actions in any way?

1 A. No.

2 Q. Why not?

3 A. No matter when there's a fight, there's a potential for  
4 injury, and it's a call that we take seriously.

5 Q. Particularly in this area?

6 A. Yes, particularly in that area.

7 Q. So, after hearing this call for a potential fight, what  
8 did you do?

9 A. At that time we decided that that was a more important  
10 call, and we headed in that direction.

11 Q. And could you indicate on the map how you got into the  
12 area, please?

13 A. Sure. We were on Norfolk Street just out of view of this  
14 map, and we headed in this direction. Oops, sorry, I don't  
15 know what I did. We were headed down Norfolk Street  
16 southbound. Sorry.

17 MR. WORTMANN: Can we clear that again?

18 THE COURT: That happens when you touch the screen.

19 A. We were on Norfolk Street which is a street next to the  
20 park, and we were headed in a southbound direction.

21 Q. And where did you stop your car?

22 A. We stopped our car on Mildred Ave.

23 Q. Okay. And showing you what's been marked as Exhibit 5.7,  
24 do you recognize that picture?

25 A. That's a picture of the car that we were in that evening,

1 and that's exactly where we stopped.

2 Q. Was there a reason that you took a left onto Mildred than  
3 rather took a right onto Fessenden?

4 A. Yes.

5 Q. Why?

6 A. While we were en route to the call, we observed a group of  
7 about five males that were walking towards us on the sidewalk.

8 Q. Did you recognize any of those men when you first saw  
9 them?

10 A. No.

11 Q. Did you have any reason to think that they had been  
12 engaged in any illegal conduct?

13 A. No.

14 Q. So what was the significance of them being there?

15 A. At that point we didn't really know what the significance  
16 was. We stopped the car to get out and speak with them, just  
17 to determine whether or not they were witnesses, whether they  
18 were participants in the fight or if they were involved in any  
19 way.

20 Q. The kind of thing you do every day?

21 A. Yes.

22 Q. Who was the first person out of the car?

23 A. Officer Finn exited the passenger side.

24 Q. And where did he go?

25 A. He went up Norfolk Street to the sidewalk where the group

1 was walking towards us.

2 Q. And did you get out of the car?

3 A. I did.

4 Q. And did you join Officer Finn in speaking to the group of  
5 males?

6 A. No.

7 Q. Why not?

8 A. As I exited the driver's side and began making my way to  
9 the sidewalk, I observed that one of the males had broken away  
10 from the group and began walking down Mildred Ave.

11 Q. Now, when you say broken away from the group, what caused  
12 you to think that they were part of the group?

13 A. We observed them just walking in a line down Norfolk  
14 Street. It was quite obvious to us that they weren't just a  
15 group walking.

16 Q. So the fact that this individual -- did he break away from  
17 the group after Officer Finn approached?

18 A. It was almost simultaneously. As we stopped, pulled up  
19 the cruiser, four of the males stopped on the sidewalk, and  
20 this particular male just continued to walk.

21 Q. Was that out of concern to you?

22 A. It was.

23 Q. Why?

24 A. This was something we've seen in the past. It just  
25 appeared to us at that point maybe the reason he broke from the

1 group is he didn't want to speak with the police, and he was  
2 trying to avoid us.

3 Q. Now, as this individual got closer to you, did you notice  
4 anything else that you considered to be significant?

5 A. I observed that he was walking quickly with his head down.  
6 I also noticed that he was wearing a dark hoodie, a very heavy  
7 and baggy hoodie.

8 Q. All right. Let me ask you about the first one. So you  
9 had just pulled into the intersection of Norfolk and Mildred,  
10 and this individual walked right by you without making eye  
11 contact?

12 A. Yes.

13 Q. Without looking at you?

14 A. Yes.

15 Q. Did he maintain a stare straight down?

16 MR. GARRITY: Judge, I'd object, leading.

17 THE COURT: Sustained.

18 Q. How were his eyes directed?

19 A. As he was walking, he had his head down, he was staring at  
20 the street, just looking down, not making eye contact or  
21 looking in my direction.

22 Q. And how would you describe the pace of his walking?

23 A. He was walking a very quick pace.

24 Q. Now, you also mentioned that he was wearing a black  
25 hoodie. Could you describe that in a little more detail,

1 please?

2 A. Sure. It was a very baggy hooded sweatshirt, had a hood  
3 on it.

4 Q. Was that of concern to you?

5 A. It was.

6 Q. Tell us why.

7 A. Sure. First and foremost, it was unsuitable for the  
8 weather. That told me that maybe he was wearing it trying to  
9 conceal something underneath. Typically we see on the street  
10 that, you know, if it's a summer night and someone is wearing a  
11 hoodie, there's a reason for that, and oftentimes it's because  
12 they're hiding something underneath.

13 Q. Could be other reasons as well?

14 A. Yes.

15 Q. But it was something that you were interested in?

16 A. It was.

17 Q. As this individual got closer, did you recognize him?

18 A. I did.

19 Q. Who was he?

20 A. I recognized him as King Belin.

21 Q. And do you see the individual who you recognized as  
22 King Belin and who was walking in front of you on Mildred Ave.  
23 on September 12th, 2014, is he in the courtroom?

24 A. Yes, he is.

25 Q. Would you point him out for the record and indicate what

1 he's wearing?

2 A. Sure. He's seated over there wearing a white button-down  
3 shirt and a tie.

4 MR. WORTMANN: Your Honor, could the record reflect  
5 that Officer Bissonnette has indicated the defendant,  
6 King Belin?

7 THE COURT: Yes.

8 Q. Now, you said you knew Mr. Belin?

9 A. Yes.

10 Q. And in what way?

11 A. I've seen him in the past, I've spoken with him in the  
12 past as well as I've arrested him in the past.

13 Q. Okay. And after making these observations, after  
14 recognizing and realizing who it was, what, if anything, did  
15 you do with respect to Mr. Belin?

16 A. At that point I called out to him.

17 Q. And what, if anything, did you say to him?

18 A. I said, "Yo, King, what's going on?"

19 Q. And how far away from you was he when you said that?

20 A. I would estimate about 10 feet.

21 Q. And what was your tone of voice?

22 A. Just a regular conversational tone of voice.

23 Q. Question mark or exclamation mark at the end of the  
24 sentence?

25 A. Question mark.

1 Q. Did you believe you had said it loud enough for him to  
2 hear you?

3 A. Yes, because actually when I said it, he did look at me  
4 and give me kind of a slight smile and continued to walk.

5 Q. Did he slow down at all?

6 A. No.

7 Q. So, at that point, given the fact that he's continuing to  
8 walk, what, if anything, did you decide to do?

9 A. At that point I decided to attempt to speak with him, I  
10 sped up a little bit, and as I neared him, he stopped and  
11 turned in my direction.

12 Q. And looking at this Exhibit 5.7 that's on the document  
13 camera, can you tell us kind of where it was you two met?

14 A. Sure. He was walking on the sidewalk towards the front of  
15 my cruiser, almost towards the entrance to the park. We ended  
16 up stopping and meeting just in the middle of the street almost  
17 where you can see this patch of different cement on the  
18 sidewalk there, on the street, rather, maybe 10 or 15 feet in  
19 front of my cruiser.

20 Q. Okay. And when he turned around to speak to you, had you  
21 said anything to him other than, "Yo, King, how are you doing,  
22 what's up?"

23 A. No.

24 Q. Had you placed your hands on him in any way?

25 A. No.

1 Q. When he turned to you and approached you, how far were you  
2 from him?

3 A. About an arm's length, and then we stopped.

4 Q. And did you say something further to him at that point?

5 A. Yes.

6 Q. What did you say?

7 A. At that point I asked him if he had anything on him.

8 Q. Is that a phrase you use regularly on the street?

9 A. It is.

10 Q. And when you ask somebody whether they have anything on  
11 them, why are you asking that question, Officer Bissonnette?

12 A. It's actually for several reasons: First of all, I want  
13 to know if he has something on him, a weapon or drugs.

14 Secondly, I want to see what his reaction is to the question.

15 Q. What do you mean by that?

16 A. Typically somebody that does have something will have a  
17 different reaction than somebody who is just say walking down  
18 the street. A lot of times that question will get a nervous  
19 response.

20 Q. Okay. And can you tell us what Mr. Belin's reaction was  
21 when you asked him in the middle of that street if he had  
22 anything on him?

23 A. Sure. After I asked him that question, his whole demeanor  
24 immediately changed. I saw his face almost drop. He took one  
25 deep breath, and then he began breathing nervously, almost like

1 quick.

2 Q. Tell us more about the change in the facial expression.

3 A. Sure. As soon as I asked him the question, it was almost  
4 like his face just dropped. You could tell, it was almost like  
5 I would say a deer in the headlights. At that point I knew  
6 something was up. Normally because his facial expressions and  
7 because he took that real quick deep breath. It was obvious to  
8 me that he was nervous.

9 Q. Did he take any -- did he make any movements that were of  
10 concern to you?

11 A. He did.

12 Q. Tell us.

13 A. Almost immediately he looked over his shoulder, and he  
14 took one step back.

15 Q. Okay. Now when you say over his shoulder, show us how.

16 A. Sure. So we were standing, I was in front of him, and he  
17 almost went like this. (Indicating)

18 Q. And was that of concern to you?

19 A. It was concerning to me. At that point, I believe that  
20 maybe he was making a decision to run away.

21 Q. And when did he take the step back?

22 A. At the same time he looked back and took one step.

23 Q. And at that point did you make an investigative decision  
24 as to what you were going to do?

25 A. Yes.

1 Q. And what was that?

2 A. At that point I was concerned that he did indeed have  
3 something on him, and I made a decision that I was going to  
4 frisk him.

5 Q. Could you explain to the jury what a pat frisk is, please.

6 A. Sure. A pat frisk is it's a pat-down of the outer most  
7 clothing in search for a weapon.

8 Q. And can you tell the jury how it was that you put your  
9 decision, that is, to do a pat frisk into effect?

10 A. Sure. I actually reached out and grabbed Mr. Belin with  
11 one hand while reaching for his waistband.

12 Q. And when you did that, when you moved your hand towards  
13 his waistband, what happened?

14 A. As soon as I moved my hand towards the waistband, his hand  
15 dropped to his waistband.

16 Q. Was that motion, was that of concern to you?

17 A. At that point I was very concerned for my safety, yes.

18 Q. Why?

19 A. I believed he had a weapon.

20 Q. And what would make you think that he had a weapon in his  
21 waistband?

22 A. More specifically, his reaction to me trying to frisk that  
23 area was him dropping his hand to that area.

24 Q. And the guns you recovered on the street, are they  
25 generally people wearing holsters?

1 A. No.

2 Q. Where are guns usually found?

3 A. Usually they are found unsecured nonholstered in a  
4 waistband.

5 Q. Pockets, too?

6 A. Pockets, too.

7 Q. So he goes down to the waist, and what do you do in  
8 response?

9 A. In response to that, I grabbed both of his hands, and I  
10 brought them up to our chest, and at that point I told him to  
11 relax, and I kept telling him to relax. I said, "King, you  
12 know me, if you don't have anything, there's nothing to worry  
13 about."

14 Q. And did he relax?

15 A. No.

16 Q. What did he do?

17 A. At that point, we were almost kind of like in a standoff  
18 with our hands up against our chest, and I was talking to him  
19 the whole time, and it was just a struggle. He was just trying  
20 to reach down. I just kept his hands up here. At that point  
21 another officer came over to assist me.

22 Q. Ultimately how many officers came over to assist you?

23 A. Three additional.

24 Q. And tell us where you ended up once the other officers  
25 came?

1 A. Sure. If you could see in this picture here, to the left,  
2 it's a box, it's an electrical box. We ended up pushing him up  
3 against that, the whole time still wrestling for his hands as  
4 he was trying to go to his waistband, even at one point bending  
5 over at his waist, you know, just clutching that area.

6 Q. Did you continue to talk to him?

7 A. We did. The whole time I was just telling him to relax  
8 and to stop resisting.

9 Q. And did that have any impact on his behavior at all?

10 A. No. He was determined to get to his waistband at that  
11 point.

12 Q. Okay. So when you get over to the electrical box, what  
13 happens then?

14 A. So, again, we go into a tug-of-war with his arms.

15 Eventually we were able to take him to the ground right in  
16 front of our cruiser and place him into handcuffs.

17 Q. And who were the other officers who came over to assist?

18 A. Officer Dave Bridges, Officer Jeff Driscoll and  
19 Officer Tom Finn.

20 Q. Your partner?

21 A. Yes.

22 Q. And when you were able to get Mr. Belin down to the  
23 ground, did that stop him from resisting?

24 A. No, he was still resisting.

25 Q. And could you describe how you got control of his arms and

1 what you did with them?

2 A. Again, it was a wrestling match for his arms. We were  
3 able to gain control of his arms, place them behind his back  
4 and then put him into handcuffs.

5 Q. And once you had him handcuffed to the rear, what did you  
6 do next?

7 A. At that point he was laying stomach down, so I rolled him  
8 over because I still wanted to frisk that area. As I rolled  
9 him over, his hooded sweatshirt lifted up, and I saw a firearm  
10 in his waistband.

11 MR. WORTMANN: Your Honor, may I approach the witness,  
12 please?

13 THE COURT: Yes.

14 Q. Sir, showing you what has been marked for identification  
15 as Exhibit 6.1, I ask you whether you recognize that?

16 A. Yes.

17 Q. And what is it?

18 A. This is the firearm that we recovered that night from  
19 Mr. Belin.

20 Q. And how do you know it's the same one?

21 A. First of all, I recognize it from that night, also it's  
22 marked with a CC number.

23 Q. And what is a CC number?

24 A. It's a number that every call gets, and it's a way we  
25 track our calls, it's a report number.

1 Q. So every report gets an independent number applicable only  
2 to it?

3 A. Yes.

4 Q. And that number is listed on the exhibit?

5 A. It's listed on the firearm, yes.

6 Q. And obviously when you saw it, the magazine was not  
7 visible, correct?

8 A. Correct.

9 MR. WORTMANN: Your Honor, I offer Exhibit 6.1 into  
10 evidence.

11 MR. GARRITY: The prior objection.

12 THE COURT: It's overruled. It may be admitted 6.1.

13 (Exhibit No. 6.1 was admitted into evidence.)

14 MR. WORTMANN: Your Honor, may I just simply pass this  
15 in front of the jury by walking it by rather than handing it to  
16 them?

17 THE COURT: Yes.

18 Q. Now, once you removed the gun from Mr. Belin's waistband,  
19 what did you do with it?

20 A. At that point I put it in my pocket, and I requested for  
21 detectives to respond as well as our patrol supervisor.

22 Q. And did you learn that there were some additional --  
23 additional ammunition had been seized from him as well?

24 A. Yes.

25 Q. And what were they stored in?

1 A. I later learned that--

2 MR. GARRITY: I object, basis of knowledge.

3 THE COURT: Sustained.

4 Q. While you were on scene, did you see any additional  
5 ammunition?

6 A. Yes, I did.

7 Q. And where did that come from?

8 MR. GARRITY: Objection.

9 THE COURT: Sustained.

10 Q. Are you aware, did you personally see any additional  
11 ammunition recovered from Mr. Belin?

12 MR. GARRITY: Objection. Leading.

13 THE COURT: Sustained.

14 Q. Were there any other items seized from Mr. Belin?

15 MR. GARRITY: Objection.

16 THE COURT: Sustained.

17 MR. WORTMANN: May I approach, your Honor?

18 THE COURT: Yes.

19 Q. Showing you what's been marked as Exhibit 6.3, do you  
20 recognize those, sir?

21 A. Yes, I do.

22 Q. And do you know where they came from?

23 A. These came from Mr. Belin that night.

24 Q. And how were they packaged when they were recovered?

25 MR. GARRITY: Objection, Judge, basis of knowledge.

1                   THE COURT: Let me see counsel at sidebar.

2                   MR. WORTMANN: Your Honor, let me ask one more  
3 question, if I can.

4                   THE COURT: All right.

5 Q. Did you see these items recovered from Mr. Belin?

6                   MR. GARRITY: Objection. Leading.

7                   THE COURT: I'll allow it. Overruled.

8 A. No.

9 Q. Okay.

10                  THE COURT: Let me see counsel at sidebar.

11                  (SIDEBAR CONFERENCE WAS HELD AS FOLLOWS:)

12                  THE COURT: I don't see how this witness without more  
13 can say, you know, based on his hearsay understanding that  
14 these items were recovered from King Belin.

15                  MR. WORTMANN: I'll move on, your Honor.

16                  THE COURT: Okay.

17                  (SIDEBAR CONFERENCE WAS CONCLUDED)

18 Q. Now, once the detectives arrived, how long did you remain  
19 on scene?

20 A. I would submit that we were there for 45 minutes.

21 Q. And when you went back to District B-3 -- who were the  
22 detectives -- who did you give the gun to?

23 A. Detective Magoon.

24 Q. And did you see Detective Magoon back at the station?

25 A. Yes, I did.

1 Q. And were you present when he made the gun safe?

2 A. Yes.

3 Q. And did you learn whether or not the gun had been loaded?

4 A. I learned that it was loaded, yes.

5 Q. Did you see that it had been loaded?

6 A. Yes.

7 Q. Do you recall how many rounds of ammunition were in the  
8 gun?

9 A. There were 11 total, there were 10 in the magazine, and  
10 there was one in the chamber.

11 MR. WORTMANN: May I approach the witness, your Honor,  
12 please?

13 THE COURT: Yes.

14 Q. Showing you what was marked as Exhibit 6.2, do you  
15 recognize those bullets?

16 A. Yes, these are the 11 rounds that were recovered.

17 Q. How do you know those are the exact same bullets that came  
18 out of the gun that day?

19 A. Again, it's marked with the CC number from that night.

20 Q. And there's also other markings on the envelope, on the  
21 actual manila envelope?

22 A. Yes, it says there's 11 cartridges from the firearm, 10 in  
23 the magazine, 1 in the chamber.

24 MR. WORTMANN: Your Honor, I offer Exhibit 6.2 in  
25 addition.

1 MR. GARRITY: Prior objection, judge.

2 THE COURT: It's overruled, it's admitted.

3 (Exhibit No. 6.2 was admitted into evidence.)

4 Q. Earlier, Officer Bissonnette, you indicated to us that you  
5 were familiar with Mr. Belin prior to September 17th, 2012?

6 A. Correct.

7 Q. And you indicated, in fact, one of the ways you were  
8 familiar, you had arrested him before?

9 A. Yes.

10 Q. And do you recall the date of that arrest?

11 A. April 29th, 2009.

12 Q. Okay.

13 MR. WORTMANN: Your Honor, I want to put on the screen  
14 a document that's already been admitted into evidence.

15 THE COURT: What number is it?

16 MR. WORTMANN: Exhibit 4.1, your Honor.

17 THE COURT: Again, remember my earlier caution.

18 MR. WORTMANN: Yes.

19 Q. And do you recognize this booking sheet?

20 A. I do.

21 Q. And is that the booking sheet that related to the arrest  
22 on April 29th, 2009?

23 A. Yes, it is.

24 Q. And who is the person depicted in the booking photograph?

25 A. King Belin.

1 Q. And is that the person you arrested on that date?

2 A. Yes, it is.

3 Q. The same person who's in the courtroom today?

4 A. Yes.

5 Q. And did you have continuing involvement in the case?

6 A. I did.

7 Q. And, first, was he charged with two crimes that under  
8 Massachusetts law are punishable by imprisonment for a period  
9 in excess of one year, and please answer yes or no.

10 A. Yes.

11 Q. And are you familiar with what happened in the case?

12 A. Yes.

13 Q. And are you aware of whether Mr. Belin was convicted of  
14 those two offenses, that is, two offenses punishable for a  
15 period in excess of one year?

16 A. He was.

17 MR. WORTMANN: Your Honor, rather than trying to use  
18 the document camera, which doesn't seem to be helping, may I  
19 approach the witness, please?

20 THE COURT: Yes.

21 Q. First showing you Exhibit Number 3, do you recognize that,  
22 sir?

23 A. Yes.

24 Q. What is that?

25 A. That is the certified conviction from the April, 2009

1 case.

2 Q. Can you tell us what the date of the offense was as  
3 demonstrated by the copies of the indictment?

4 A. Sure, April 29th, 2009.

5 Q. The same day as your booking?

6 A. Yes.

7 Q. And if I could just direct you to the entry dated  
8 October 19th, 2010, could you read the two entries into the  
9 record as of that date.

10 A. "Offense Number 1, guilty plea as agreed upon; Offense  
11 Number 2, guilty plea as agreed upon."

12 Q. And then the last two entries for October 19th on that  
13 same sheet?

14 A. "Defendant sentenced as to so much as to Offense Number 1,  
15 defendant sentenced as to Offense Number 2."

16 MR. WORTMANN: Your Honor, may I ask that these be  
17 passed to the jury?

18 THE COURT: All right.

19 MR. WORTMANN: May I, your Honor?

20 THE COURT: Yes, I'm sorry go ahead.

21 MR. WORTMANN: If I might just have a moment, your  
22 Honor.

23 THE COURT: Yes.

24 MR. WORTMANN: That's all I have.

25 THE COURT: Ladies and gentlemen, we normally break at

1 10:30, we started late, and it's a few minutes before 10:30,  
2 but rather than interrupt the cross-examination, I think it  
3 probably makes sense to take a break now. This is intended as  
4 a stretch-your-legs and use the facilities break. The faster  
5 we get this done, the quicker the trial will move. Let's try  
6 to make it as close to five minutes as we can, and we will  
7 stand in brief recess.

THE CLERK: All rise.

9 | (A recess was taken.)

10 THE CLERK: All rise. Thank you. You may be seated.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. GARRITY:

14 Q. Good morning, Officer.

15 A. Good morning, counselor.

16 Q. You went to the academy in 2007; is that right?

17 A. That's right.

18 Q. And at the academy you were trained on the importance of  
19 report writing; is that correct?

20 A. That's correct.

21 Q. And police reports are important because other people may  
22 be relying on them?

23 A. Correct.

24 Q. And that could involve attorneys or it could involve other  
25 police officers, right?

1 A. Yes.

2 Q. So you want the report that's written to be complete and  
3 accurate, right?

4 A. Yes.

5 Q. And in this case you did not write the report; is that  
6 right?

7 A. That's right, I did not.

8 Q. It was written by Officer Finn?

9 A. Yes.

10 Q. But the report that was written by Officer Finn in your  
11 opinion was thorough, right?

12 A. Yes.

13 Q. And you had reviewed the report?

14 A. Yes.

15 Q. And the report was written about an hour after the  
16 interaction with Mr. Belin?

17 A. Correct.

18 Q. Written around 7:40 that night?

19 A. Yes.

20 Q. And you had reviewed it right as it was written?

21 A. Correct.

22 Q. And after the academy, you went to work for the Boston  
23 Police Department; is that right?

24 A. That's right.

25 Q. And you initially were walking a beat in the Back Bay?

1 A. Correct.

2 Q. And then went onto Area or District B-3, right?

3 A. That's correct.

4 Q. And as of September 17th, 2012, you had worked for the  
5 Boston Police Department for around five years?

6 A. Yes.

7 Q. And when you work at the Boston Police Department, there  
8 are rules and procedures you're supposed to follow, right?

9 A. Yes.

10 Q. You're obligated to be aware of those rules and follow  
11 them, right?

12 A. Correct.

13 Q. And you make sure that you review them periodically, I  
14 take it?

15 A. Yes, I do.

16 Q. Because there are amendments to those rules once in a  
17 while, right?

18 A. Correct.

19 Q. And one of the rules has to do with report writing; is  
20 that right?

21 A. That's correct.

22 Q. And there are specific rules with respect to handling gun  
23 cases, are there not?

24 A. Yes, there is.

25 Q. There's a distinct section of the rules and procedures of

1 the Boston Police Department on how to handle gun cases, right?

2 A. Correct.

3 Q. And in gun cases, when an officer takes possession of a  
4 gun, he's supposed to write the report, right?

5 A. Do you have a copy of the rules?

6 Q. I do.

7 A. Can I take a look at them?

8 Q. And you're required to keep a copy of those rules so your  
9 supervisor can review them to make sure that you have those  
10 rules, right?

11 A. Correct.

12 MR. GARRITY: May I approach, your Honor?

13 THE COURT: Yes.

14 Q. Officer --

15 A. Sir, if you could just show me the part you're referring  
16 to?

17 Q. Yes. So we know what we're looking at, these are the  
18 rules and procedures from the Boston PD?

19 A. They are.

20 Q. Rule 3.11 talks about procedures for handling firearms  
21 evidence; is that right?

22 A. That's right.

23 Q. And Section 3 of that rule has requirements for officers  
24 who take possession of firearms, right?

25 A. Correct.

1 Q. And that rule requires that officers that come into  
2 possession of firearms, that they write the incident report,  
3 right?

4 A. Yes.

5 Q. And in this case, you did not write the incident report?

6 A. My partner wrote it.

7 Q. My question, Officer, you did not write the report?

8 A. I did not personally.

9 Q. The rule also requires that you complete a firearms  
10 submission form, BPD Form 2419, right?

11 A. Correct.

12 Q. Did you complete one of those forms?

13 A. I did not personally, no.

14 Q. And did you complete or sign the firearms analyst examiner  
15 unit control log?

16 A. Personally, I did not, no.

17 Q. And the rule from the Boston Police Department requires  
18 that you do that, right?

19 A. Yes.

20 Q. And there's also a rule with respect to when you come into  
21 possession of physical evidence, what you're supposed to do  
22 with it, right?

23 A. Yes.

24 Q. You're supposed to diagram it on an incident report form,  
25 right?

1 A. I think you're referring to what detectives do.

2 MR. GARRITY: May I approach, your Honor?

3 THE COURT: Yes.

4 Q. I show you Rule 309 from the Boston Police Department  
5 Rules and Procedures that deals with handling physical evidence  
6 and other property coming into police custody. Do you see  
7 that?

8 A. Yes.

9 Q. And there's a Section 4 that talks about, "Whenever any  
10 item of evidence is found, seized, recovered or otherwise  
11 collected, it shall be noted as to position and location by  
12 diagramming on an appropriate Form 1.1 or 1.11 by the officer  
13 who collects such evidence." Do you see that?

14 A. I do.

15 Q. Did you do that?

16 A. Again, that's referring to who collected the evidence.

17 Q. My question is did you do that?

18 A. I did not personally, no.

19 Q. And Form 1.1 is an incident report form, right?

20 A. 1.1, yes.

21 Q. And that's the incident report form you did not write  
22 yourself?

23 A. Correct.

24 Q. And you applied for the criminal complaint in this case,  
25 right?

1 A. Either I or my partner did.

2 Q. Well, you're required -- you were the arresting officer,  
3 right?

4 A. My unit was the arresting unit, so me and my partner, it  
5 was a collaborative effort.

6 Q. Well, you signed the application for the complaint, did  
7 you not?

8 A. I'm not sure.

9 MR. GARRITY: May I approach, your Honor?

10 THE COURT: Yes.

11 Q. I show you the --

12 A. Yes, I did sign it.

13 Q. And that's an application for a criminal complaint that  
14 was filed against Mr. Belin, right?

15 A. Correct.

16 Q. And the rules of the Boston PD are that the arresting  
17 officer files or signs the application for the criminal  
18 complaint, right?

19 A. Yes.

20 Q. So you were the arresting officer?

21 A. Me and my partner were the arresting officers.

22 Q. Well, the rule says the arresting officer files it. You  
23 signed it, right?

24 A. Correct, but if you look at it, it also has Officer Finn's  
25 name on it.

1 Q. He didn't sign it though, right?

2 A. No.

3 Q. The rules of the Boston PD require that the arresting  
4 officer file a criminal complaint, right?

5 A. Correct.

6 Q. And you're also supposed to submit an incident report form  
7 with that application that you fill out, right?

8 A. Correct.

9 Q. And you didn't do that in this case?

10 A. Again, my partner did.

11 Q. Well, you didn't do it?

12 A. No, not personally.

13 Q. The rules require it, right?

14 A. The rules require that the arresting officer. In this  
15 case, me and my partner were both the arresting officer.

16 Q. Well, this is a gun case, right?

17 A. Correct.

18 Q. And the rules require, does it not, that you're supposed  
19 to in gun cases be extra scrupulous in following the rules,  
20 right?

21 MR. WORTMANN: Objection, your Honor.

22 THE COURT: Sustained in that form.

23 Q. Do you recall what the rule from the Boston Police  
24 Department on gun cases indicates in terms of how scrupulous  
25 you're supposed to be and whether or not to follow it?

1 A. Yes.

2 Q. And that rule as you recall says you're supposed to be  
3 extra scrupulous in following them, right?

4 A. If you let me answer the question, I'll gladly do it. Me  
5 and my partner ride together. When we make an arrest, it  
6 doesn't matter who finds the gun, we're both the arresting  
7 officers. In this case, you're right, I did find the firearm,  
8 my partner wrote the report, and that follows the rule to a T.

9 Q. The rule, as you understand it, allows someone else other  
10 than the officer who obtains the gun to write the report?

11 A. Correct, as I just said, the arresting officer is not only  
12 just me, but it's also my partner. We ride together. Any  
13 arrest that we make is made by the both of us, so under the  
14 rule he could write the report or I could.

15 Q. Did I read the rule wrong in terms of what an officer who  
16 obtains a gun is supposed to do?

17 A. Not at all, but like I just explained in this case, just  
18 because I am the one that found the firearm, my partner was  
19 just -- me and my partner both work collaboratively, so it's a  
20 dual arrest. We both arrested. We both are just responsible  
21 for this arrest.

22 Q. Will I find a section in that rule that says your partner  
23 can write the report?

24 A. Like I just said, my partner is also the arresting officer  
25 in the case.

1 Q. Not my question, sir. Will I find a section in that rule  
2 that allows your partner to write the report?

3 A. Like I just said, you're saying the arresting officer. My  
4 partner is the arresting officer as well.

5 Q. I'm putting aside the issue of the arresting officer, I'm  
6 dealing with someone, an officer coming into possession of a  
7 gun. Does that rule allow someone other than that officer to  
8 write the report?

9 A. I guess. My partner came in possession of the gun just as  
10 well as I did.

11 Q. Will I find a section in that rule that says that your  
12 partner can write it?

13 A. Yes, the arresting officer.

14 MR. GARRITY: May I approach, your Honor?

15 THE COURT: Yes.

16 Q. I show you the rule --

17 A. Sure.

18 Q. -- on handling gun cases. Can you show me where it says  
19 someone other than the officer coming into possession of the  
20 gun can write the report?

21 A. Again, the officer who came into possession of the gun can  
22 write the report, and like I said, my partner is just as  
23 responsible coming into possession of that gun. We work  
24 together as a team, so our team came into possession of it.  
25 Just because I pulled it out of his waistband doesn't mean I'm

1 the only one that can write the report.

2 Q. But your officer, Officer Finn, didn't see the interaction  
3 between you and Mr. Belin, right?

4 A. But he's still the arresting officer.

5 Q. He didn't see the interaction, right?

6 A. No.

7 Q. His back was to you?

8 A. That's correct.

9 Q. And the rule says you're supposed to write the report?

10 A. Again, I just explained it.

11 Q. And this report was written about an hour after the event,  
12 right?

13 A. Correct.

14 MR. WORTMANN: Your Honor, asked and answered.

15 THE COURT: Overruled.

16 Q. You said to this jury here that when Mr. Belin walked by,  
17 his head was down?

18 A. Yes.

19 Q. The report that you reviewed, there's no indication of  
20 Mr. Belin having his head down, is there?

21 A. Again, can I see the report?

22 Q. Sure.

23 A. It doesn't say that in there, no.

24 Q. You told this jury that he turned around and smiled at  
25 you?

1 A. Yes.

2 Q. We won't find that in the report either, will we?

3 A. No.

4 Q. In fact, the report talks only about one term by  
5 Mr. Belin, and that's as you approached him and were right next  
6 to him when he turned around, right?

7 A. Yes.

8 Q. So there's no mention in this accurate, complete, thorough  
9 report that you reviewed of him turning and making a half  
10 smile, right?

11 MR. WORTMANN: Your Honor, argumentative.

12 THE COURT: Sustained.

13 Q. There's no mention of that term, the half smile in the  
14 report, right?

15 A. No.

16 Q. In this report that you reviewed, there's no mention of  
17 Mr. Belin taking a step back from you, is there?

18 A. No.

19 Q. And the report that Officer Finn wrote, you're telling him  
20 about an hour after the event what you had observed, right?

21 A. Yes.

22 Q. And you left those factors out of what you tell  
23 Officer Finn, right?

24 A. They weren't in the police report.

25 Q. And this report, I take it, was written when your memory

1 of the event was fresher in your mind, right?

2 A. Correct.

3 Q. And when the memory was fresh, you forgot to mention these  
4 factors?

5 A. It's a police report. I've never seen a perfect police  
6 report, I could just tell you what happened that day, and I  
7 did.

8 Q. You said Mr. Belin, just getting back to when you first  
9 get to the scene, you get a report of a radio call, right?

10 A. Yes.

11 Q. Of a fight, right?

12 A. Correct.

13 Q. The fight that the report is of, is that a fight at  
14 Norfolk and Fessenden Street, right?

15 A. That's correct.

16 Q. And you and Officer Finn drive down Norfolk, and you see  
17 five individuals walking in a line, you said?

18 A. Together in a group, yes.

19 Q. Are they in a line or right next to each other?

20 A. Right next to each other, a line across the sidewalk.

21 Q. On that sidewalk, there's five individuals?

22 A. Yes.

23 Q. And you have the briefest view of them before you pull  
24 into Mildred Ave., right?

25 A. Correct.

1 Q. So brief that you couldn't even see what the other  
2 individuals were wearing, right?

3 A. That's correct.

4 Q. You learned after the fact, however, that those  
5 individuals were wearing hoodies as well, right?

6 A. Yes, I did.

7 Q. And you found that out because those individuals were FIOD  
8 carded down Norfolk; is that right?

9 A. That's correct.

10 Q. They were FIOD carded down by Mildred Avenue or  
11 Evelyn Avenue, I'm sorry?

12 A. Evelyn, yes.

13 Q. And Evelyn Avenue is at the end of the tennis courts,  
14 right?

15 A. Yes.

16 Q. So the four other individuals walking down Norfolk are  
17 wearing hoodies as well, right?

18 A. I never saw them.

19 Q. But you find out after the fact they're wearing hoodies?

20 A. Yes.

21 Q. And other individuals that night were wearing either a  
22 coat or a sweatshirt, the people in the park I'm talking about?

23 A. Yes.

24 Q. So it wasn't overly warm?

25 A. I can't remember actually what the weather was. Again, I

1 was wearing a T-shirt and shorts.

2 Q. I know what you said you were wearing, other individuals  
3 didn't think it was as warm because they're wearing sweatshirts  
4 or coats?

5 A. Correct.

6 Q. You get this report of a fight at Norfolk and Fessenden,  
7 you turn into Mildred?

8 A. Correct.

9 Q. You're driving, right?

10 A. Yes.

11 Q. Officer Finn is in the passenger's seat?

12 A. That's correct.

13 Q. You pull in front of these five individuals?

14 A. Yes.

15 Q. Because you only get the briefest of looks at them, you  
16 couldn't tell whether they were talking to each other as they  
17 went down the street, right?

18 A. No.

19 Q. You got the briefest of looks, so you couldn't even tell  
20 whether they were walking together?

21 A. I mean, there was nobody else on the sidewalk. It's  
22 obvious that they were walking together to us.

23 Q. Well, how long a view of them did you have of them before  
24 you pulled in front of them?

25 A. Just a few seconds.

1 Q. And is it uncommon for nonassociated groups to be arriving  
2 at an intersection at the same time?

3 MR. WORTMANN: Objection, your Honor.

4 THE COURT: I'll allow it.

5 A. In this case, it was obvious to me these individuals were  
6 walking together. It's not uncommon to see what you're talking  
7 about, but this was obvious, there was nobody else on the  
8 sidewalk, these were the five people there, and there's no  
9 question that they were together.

10 Q. They weren't interacting with each other, right?

11 A. They very well could have been. Again, like you said --

12 Q. I'm not asking what could have been.

13 MR. WORTMANN: Objection, your Honor, I'm asking that  
14 he be allowed to answer the question.

15 THE COURT: All right. Let's put the question to the  
16 witness again and we'll hear the answer.

17 Q. Did you see them interacting with each other?

18 A. Again, like you said, we saw them for a few seconds. Did  
19 I have enough time to see if they were having a full-out  
20 conversation, no, but just the fact they were walking so close  
21 together, here's five guys walking down the street together.

22 Q. And at the academy besides being trained on writing  
23 reports, you were also trained on encounters with individuals  
24 in the street, right?

25 A. Yes.

1 Q. When you can stop someone, when you can't?

2 A. Correct.

3 Q. Right, and this encounter that you and Officer Finn wanted  
4 to engage in with these five individuals was a consensual  
5 encounter, right?

6 A. Correct.

7 Q. Meaning that the individuals don't have to talk to you?

8 A. That's correct.

9 Q. They can ignore you and keep going, right?

10 A. Yes.

11 Q. And the law allows that, right?

12 A. Correct.

13 Q. And when you get out of the cruiser, you see Mr. Belin  
14 walking by, right?

15 A. Yes.

16 Q. That's when you recognize him?

17 A. That's correct.

18 Q. And you begin to follow him?

19 A. Yes.

20 Q. He doesn't have to talk to you, right?

21 A. No.

22 Q. He can keep going?

23 A. That's correct.

24 Q. But you didn't want that to happen because you began to  
25 pursue him, right?

1 A. I walked after him, yes.

2 Q. And you walked up to him close enough so that he had to  
3 turn around, right?

4 MR. WORTMANN: Objection, your Honor. How does he  
5 know what Mr. Belin did, why Mr. Belin did what he did?

6 Q. Well, have you testified --

7 THE COURT: Are you going to put another question to  
8 him?

9 MR. GARRITY: Yes, your Honor.

10 THE COURT: All right.

11 Q. Have you testified previously that you got so close to him  
12 that he had no choice but to turn around?

13 A. No.

14 Q. Well, let me ask you this way. Have you testified  
15 previously that you got so close to him that he would know that  
16 he wouldn't be able to walk away from you?

17 A. Can you ask that question again?

18 Q. Sure. Have you testified previously that you got so close  
19 to him that he knew he would have no choice but to talk to you?

20 A. I got within an arm's reach. He made the decision on his  
21 own to turn around and speak with me. I never asked him to  
22 stop. He stopped on his own. I never got in front of him. He  
23 actually turned around.

24 Q. You've testified on this event on two other occasions; is  
25 that right?

1 A. Correct.

2 Q. Once in February of last year and once in December of last  
3 year?

4 A. Yes.

5 Q. Do you recall testifying February of last year on page 20:  
6 "So I sped up my pace, I closed distance with him, when I got  
7 into about an arm's reach." Question: "And it became clear  
8 that he wasn't going to be able to walk away from you?" "Yeah,  
9 at that point he stopped and turned in my direction."

10 A. Sure, so in his mind he maybe thought he wasn't going to  
11 be able to walk away. I never blocked him, I never stopped  
12 him. I think that's referring to what I thought he was  
13 thinking, that it was clear that I was going to follow him  
14 until he did stop. Now, again, he stopped on his own accord.

15 Q. Well, I just want to make sure I get this straight. He  
16 can walk away, right?

17 A. Yes.

18 Q. You didn't want that to happen?

19 A. Correct.

20 Q. You began to follow him?

21 A. Yes.

22 Q. You got close enough so that he would get the message that  
23 he had no choice but to engage with you, right?

24 A. Again, he made that decision. It played out the way it  
25 played out, he stopped, and he turned in my direction.

1 Q. And this is within feet of your cruiser, right?

2 A. About 15, 10 to 15 feet.

3 Q. And within seconds of seeing these individuals walking on  
4 Norfolk Street?

5 A. Yes.

6 Q. And after he turned, you said you asked him this question  
7 about what he had on him, right?

8 A. Yes.

9 Q. You say he steps back, right?

10 A. Yes.

11 Q. But your report says otherwise, right?

12 A. My report doesn't reflect that, but that's what I  
13 testified to.

14 Q. You say this half smile that your report doesn't refer to  
15 that it drops?

16 A. Correct.

17 Q. And then you reach out and grab him, right?

18 A. Yes.

19 Q. And you grab him with your right hand or left hand?

20 A. I can't recall, I just reached out and grabbed him, and at  
21 the same time I went for his waistband, so I used both hands.

22 Q. And eventually he's pushed up against that brown box?

23 A. Yes.

24 Q. Is that right? And Officer Bridges helps you as well?

25 A. Correct.

1 Q. And does Officer Driscoll come over?

2 A. Yes.

3 Q. And Officer Finn, is he still back with the other  
4 individuals?

5 A. Yes, but eventually he does come over and assist us.

6 Q. Does Officer Bridges to your knowledge write a report?

7 A. No.

8 Q. Does Officer Driscoll to your knowledge write a report?

9 A. No.

10 Q. Are the four individuals who were talking to Officer Finn  
11 who are within feet of this, are they asked to give a  
12 statement?

13 A. No.

14 Q. Are they interviewed for what they potentially observed?

15 A. I'm not sure.

16 Q. The Mildred Avenue School is right there on the corner,  
17 right?

18 A. Yes.

19 Q. Did you make any attempts to see whether or not there are  
20 video cameras in that school location?

21 A. You're going to have to check with the detective on that  
22 one.

23 Q. To your knowledge, did any detective or officer make that  
24 attempt?

25 A. I have no knowledge either way.

1 Q. And you're familiar with this area, right?

2 A. Yes.

3 Q. Very familiar with it?

4 A. Yes.

5 Q. Do you know that in between those two basketball courts,  
6 there's a video camera, right?

7 A. I'm not sure.

8 Q. Well, how often have you been to that Norfolk Park?

9 A. Plenty of times.

10 Q. I show you Exhibit 5.3. Do you see that there?

11 A. Yes.

12 Q. And this is a view looking down Norfolk towards the  
13 basketball courts?

14 A. Yes, it is.

15 Q. And there's some police cruisers at the far end of that  
16 photograph. Do you see those?

17 A. I do.

18 Q. Is that right near Evelyn Avenue?

19 A. Yes, Evelyn would be on the left-hand side.

20 Q. On the other side. Is that where the four individuals  
21 were being FIOD carded?

22 A. I believe so, yes.

23 Q. Can you tell the jury what FIOD is?

24 A. FIO, it's a field interrogation observation form, so it's  
25 a form we fill out pretty much on any encounter that we have

1       with people who have -- who are believed to be committing a  
2       crime or who we've had past experiences with.

3       Q.     But no interviews were done to your knowledge?

4       A.     Again, I wasn't there. I don't know what the officers  
5       talked to these individuals about.

6       Q.     And I'm just going to circle or point. Do you see the  
7       arrow there?

8       A.     I do.

9       Q.     That's a security video camera, is it not?

10      A.     I can't tell from this picture.

11      Q.     Well, you were down there a bunch of times, right?

12      A.     Correct.

13      Q.     This photograph was taken that day, right?

14      A.     Yes.

15      Q.     Within minutes of the encounter?

16      A.     Yes.

17      Q.     You can't tell us whether that's a video camera or not?

18      A.     I just can't see it on this. If I could see the actual  
19       picture, maybe I could see it.

20            MR. GARRITY: May I approach, your Honor?

21            THE COURT: Yes.

22      A.     I can't be sure.

23      Q.     Is it fair to say you didn't make any attempts to get  
24       video footage from the scene, right?

25      A.     No.

1 Q. To your knowledge, no other officer made attempts to get  
2 video footage from the scene?

3 A. I'm not sure.

4 Q. And the only person that viewed the initial encounter  
5 between you and Mr. Belin was yourself, right?

6 A. That's correct.

7 Q. We don't have a report from Officer Bridges, right?

8 MR. WORTMANN: Objection, your Honor.

9 THE COURT: Overruled.

10 Q. We don't have a report from Officer Bridges?

11 A. No.

12 Q. To your knowledge, Officer Bridges is not testifying here,  
13 right?

14 MR. WORTMANN: Objection, your Honor.

15 THE COURT: Sustained.

16 Q. There were other individuals in the park, right?

17 A. Yes.

18 Q. A number of adults, right?

19 A. Yes.

20 Q. Did you interview them?

21 A. Personally, no.

22 Q. To your knowledge, did any officer interview them?

23 A. I'm not sure.

24 Q. Did you photograph the gun on Mr. Belin?

25 A. Personally, no, I did not.

1 Q. Doesn't the Boston Police Department rules require  
2 physical evidence be photographed where it's located?

3 A. Again, at that point if there's a gun on his waistband,  
4 for my own safety, I need to take that gun out of his  
5 waistband. Under no circumstance would a gun be -- a firearm  
6 be photographed in somebody's waistband, it's just not safe.  
7 It's not safe to myself, it's not safe to anybody around.

8 Q. My question, Officer, doesn't the rule require it be  
9 photographed where it's located?

10 A. Again, for my own safety, that would never happen. I  
11 remove that firearm just as instinctual way to protect myself.

12 Q. Were photographs taken of Mr. Belin after the gun was  
13 taken away?

14 A. Just booking photos.

15 Q. So no photos at the scene?

16 A. I don't believe so, no.

17 Q. Were any photos taken of any cigarette pack to your  
18 knowledge at the scene?

19 A. I don't believe so, no.

20 Q. And just getting back to when you first see Mr. Belin and  
21 before you grab him, you've been trained by the Bureau of  
22 Alcohol, Tobacco and Firearms in the characteristics of an  
23 armed gunman, right?

24 A. Correct.

25 Q. And there are a number of characteristics that an armed

1 gunman might have, right?

2 A. Yes.

3 Q. And we're talking about someone who is carrying a  
4 concealed gun, right?

5 A. Correct.

6 Q. And some of those characteristics involve walking in a  
7 funny way?

8 A. Yes.

9 Q. Patting the gun to make sure it's still there?

10 A. Correct.

11 Q. Blading away from you?

12 A. Yes.

13 Q. Can you tell us some of the other characteristics?

14 A. Sure, just walking with an unusual gait, again, clothes  
15 unsuitable for the weather, looking for an escape route,  
16 holding a gun if they're running, things like that.

17 Q. Sagging clothes?

18 A. Yes.

19 Q. Bulges?

20 A. A bulge.

21 Q. Other than the black hoodie, you didn't see any  
22 characteristics of Mr. Belin that matched up with the  
23 characteristics of an armed gunman you've been trained in,  
24 right?

25 A. No, this was a very short encounter.

1 Q. But you didn't see any of the other characteristics,  
2 right?

3 A. No.

4 Q. And the gun, after you took possession of it, you put it  
5 in your pocket?

6 A. Yes.

7 Q. Did you tag it?

8 A. No.

9 Q. You're required by your rules to tag it, right?

10 A. Again, that wasn't my first concern, my first concern was  
11 the safety of myself, the citizens in the area and everybody  
12 else. We're talking about a loaded firearm.

13 Q. I understand, Officer, but your rule requires that you tag  
14 it, right?

15 A. And it was tagging.

16 Q. Did you tag it?

17 A. No.

18 Q. Was it tagged there at the scene?

19 A. No.

20 Q. You say you gave it over to Detective Magoon?

21 A. Correct.

22 Q. You didn't give it to Detective Josey?

23 A. I don't believe so, no.

24 Q. Detective Josey and Detective Magoon arrived together?

25 A. Yes.

1 Q. Detective Magoon took the photographs?

2 A. To the best of my knowledge, yes.

3 Q. And it's clear in your memory you gave the firearm to  
4 Detective Magoon?

5 A. I believe so. I mean, there was a few detectives on  
6 scene, and I gave it to one of them.

7 Q. Well, you told us on direct you gave it to  
8 Detective Magoon?

9 A. To the best of my knowledge, yes.

10 Q. Do you have a lack of memory who you gave it to?

11 A. No.

12 MR. GARRITY: May I have one second, your Honor?

13 THE COURT: Yes.

14 Q. And you say he struggled with you, put his hands down by  
15 his waist, right?

16 A. Yes.

17 Q. And did so even after you supposedly saw the gun in his  
18 waistband, right?

19 A. I didn't see the gun in his waistband until after he was  
20 handcuffed.

21 Q. But you were still struggling after that, right?

22 A. Yes.

23 Q. If what you say actually happened actually happened, you  
24 had probable cause to arrest him for resisting arrest, right?

25 A. Yes.

1 Q. You did not?

2 A. No.

3 Q. You had probable cause to arrest him for assault on a  
4 police officer, right?

5 A. Yes.

6 Q. You did not?

7 A. No.

8 MR. GARRITY: Your Honor, may I have one second?

9 THE COURT: Yes.

10 MR. GARRITY: Thank you, your Honor, no further  
11 questions.

12 THE COURT: Redirect.

13 MR. WORTMANN: Thank you, your Honor.

14 REDIRECT EXAMINATION

15 BY MR. WORTMANN:

16 Q. Officer Bissonnette, why didn't you charge him with  
17 resisting arrest?

18 A. This is not something I commonly charge, it's just a  
19 personal opinion.

20 Q. Why didn't you charge him with assault and battery on a  
21 police officer?

22 A. Again, that's not something I commonly charge. I wasn't  
23 injured.

24 Q. Was anybody injured?

25 A. No.

1 Q. Now, let me ask you something. How many times have you  
2 left a gun in the possession of a suspect so that somebody  
3 could get a camera and photograph it?

4 A. Never.

5 Q. Never?

6 A. Never.

7 Q. How many times have you been disciplined because your  
8 partner wrote the report and you reviewed it rather than the  
9 other way around?

10 A. Never.

11 Q. And you were asked about what was said and what wasn't  
12 said in the report regarding your initial approach to  
13 Mr. Belin. Do you recall that?

14 A. Yes.

15 Q. And I'm going to first show you a copy of the police  
16 report. Do you recognize that, sir, as the police report that  
17 was prepared by you and Officer Finn on that evening?

18 A. Correct.

19 Q. And could you read for the jury, please, the part I've  
20 highlighted regarding the initial interaction?

21 A. Sure. It says, "As Officer Finn engaged this group in  
22 consensual conversation, Officer Bissonnette observed one  
23 individual break away from the group in a hurried manner  
24 walking in the direction of Norfolk Park on Mildred Ave.  
25 Officer Bissonnette observed that this individual broke from

1       the group. He appeared to avoid eye contact with the police."

2       Q. When you said he was avoiding eye contact, how did he  
3       avoid eye contact?

4       A. He was looking straight down to the ground.

5       Q. Okay. With respect to when you approached him and had the  
6       interaction, could you read that portion of what was said in  
7       the report?

8       A. "Officer Bissonnette observed Belin, turned towards the  
9       officer, and at that point Officer Bissonnette asked, "Do you  
10      got anything on you?" Officer Bissonnette saw Belin's demeanor  
11      immediately change where Belin began to exhibit several nervous  
12      mannerisms. Officer Bissonnette saw Belin take a deep breath  
13      and start to breathe at a quick and shallow rate. The officer  
14      also observed Belin turn and appear to look for an escape  
15      route."

16       Q. Where was the gun found?

17       A. In his waistband.

18       Q. Where did you see the gun?

19       A. In his waistband.

20       Q. Where did you take the gun out of?

21       A. His waistband.

22                    MR. WORTMANN: That's all I have, your Honor, thank  
23                    you.

24                    THE COURT: Recross.

25

## RECROSS-EXAMINATION

2 BY MR. GARRITY:

3 Q. You say you haven't been disciplined when someone else  
4 writes a report, right?

5 A. Correct.

6 Q. The rule, did I read it wrong, that you are supposed to  
7 write it?

8 A. I think you're looking at it wrong, yes. Again, me and my  
9 partner work collaboratively, so we're both the arresting  
10 officers, and it doesn't necessarily mean just because I remove  
11 the gun out of his waistband that I'm the arresting officer.  
12 He's my partner, so we make arrests together.

13 Q. Well, the rule that I read to you doesn't talk about  
14 arresting officer, right?

15 A. Correct.

16 Q. It talks about an officer who comes into possession of a  
17 gun and what they're supposed to do?

18 A. Correct, and as I just stated, just because I was the one  
19 that removed it from his waistband doesn't necessarily mean  
20 that I was the one in possession of it. Again, it was me and  
21 him as a team, as a Charlie K-1.

22 Q. Does the rule give you the exceptions that you've just  
23 talked about?

24 A. I just think you're misinterpreting the rule.

25 O. What part am I misinterpreting when it says you're

1 supposed to do certain stuff?

2 A. Again, I just explained just because I took the gun out of  
3 his waistband, my partner is just as involved in that arrest,  
4 and as a team, we're in possession of the firearm, so as a  
5 team, we make the arrest together, we write the necessary  
6 reports together.

7 Q. The officer who didn't even see what happened?

8 A. My partner, the officer that I was running with that  
9 night.

10 Q. That didn't see it?

11 A. Correct.

12 Q. The rule allows him to write the report of an incident he  
13 doesn't see?

14 A. Well, obviously I collaborated with him on the report, and  
15 I reviewed the report.

16 MR. GARRITY: I have no further questions.

17 THE COURT: Thank you. You may step down.

18 MR. WORTMANN: I call Officer Tom Finn to the stand.

19 THOMAS FINN, having been duly sworn by the Clerk,  
20 testified as follows:

21 THE WITNESS: Good morning, your Honor.

22 DIRECT EXAMINATION

23 BY MR. WORTMANN:

24 Q. Sir, could you tell us your name spelling your last name,  
25 first and last name for the record, please.

1 A. My name is Thomas Finn, F-i-n-n.

2 Q. And you're a Boston police officer?

3 A. Yes, I am.

4 Q. For how long?

5 A. Since November of 2006 was the academy start date, and  
6 May of 2007 I was sworn.

7 Q. Where are you presently assigned, and what do you do  
8 there?

9 A. I'm assigned to Area B-3, which is North Dorchester and  
10 Mattapan, and I'm a police officer.

11 Q. I direct your attention, sir, to September 17th, 2012.  
12 Were you working that day?

13 A. Yes, I was.

14 Q. What shift?

15 A. The first half shift, which was four to midnight.

16 Q. And what was your assignment on that particular evening?

17 A. We were assigned to the Charlie K-1 unit, which is a plain  
18 clothes unit in an unmarked vehicle.

19 Q. Who was your partner?

20 A. Philip Bissonnette.

21 Q. What shift were you working?

22 A. The four to midnight, first half.

23 Q. The plain clothes?

24 A. Yes.

25 Q. Would you wear your badge on the exterior of your

1 clothing?

2 A. Yes.

3 Q. What kind of car were you driving?

4 A. It was a Crown Victoria, unmarked police vehicle.

5 Q. Readily recognizable on the street as a police vehicle?

6 A. Yes.

7 Q. Let me focus you on the time period around 6:45 p.m. Do  
8 you recall where you were?

9 A. Yes.

10 Q. Where?

11 A. On Norfolk Street.

12 Q. And are you familiar with that area?

13 A. I am.

14 Q. And what were you doing?

15 A. We were responding to a -- we were dispatched to a radio  
16 call for a removal at a group home.

17 Q. Did you make it to that group home?

18 A. No.

19 Q. What happened?

20 A. Another broadcast was made by a department radio for a  
21 report of girls fighting on Norfolk and Fessenden.

22 Q. And based on hearing that call, did you and your  
23 partner -- your partner was Officer Bissonnette that evening?

24 A. Yes, it was.

25 Q. And did you and your partner make any decisions as to what

1 you were going to do?

2 A. Yes.

3 Q. What did you decide to do?

4 A. That radio call for that alleged fight was en route to our  
5 call on Walk Hill Street, so we preempted from that call and  
6 responded to Norfolk and Fessenden to address that fight.

7 Q. And are you familiar with the area of Norfolk and  
8 Fessenden?

9 A. Yes, I am.

10 MR. WORTMANN: Excuse me, may I approach the exhibits,  
11 your Honor?

12 THE COURT: Yes.

13 MR. WORTMANN: Thank you.

14 Q. What's there?

15 A. There's a large park, playground, athletic field, middle  
16 school.

17 Q. And could you tell the ladies and gentlemen of the jury  
18 how you drove into that, how you got into the area?

19 A. It was outbound on Norfolk Street approaching Blue Hill  
20 Avenue.

21 Q. So let me -- you were coming down this direction?

22 A. Yes.

23 Q. Okay. And then once you got to the area of Norfolk Park,  
24 where did you go?

25 A. Officer Bissonnette was driving, and he turned left on

1 Norfolk onto Mildred Ave.

2 Q. And it's Mildred Ave. on one side of Norfolk and Fessenden  
3 on the other side?

4 A. That's correct.

5 Q. Now, as you approached the intersection of Fessenden and  
6 Mildred, did you see something that caught your attention?

7 A. Yes.

8 Q. What did you see?

9 A. There was a group of five males walking on Norfolk Street  
10 towards Mildred Ave.

11 Q. Could you describe the manner in which they were walking?

12 A. A casual, normal pace.

13 Q. Did it appear to you that they were together?

14 MR. GARRITY: Objection. Leading.

15 A. Yes.

16 THE COURT: Sustained.

17 Q. How did it appear to you with respect to whether they were  
18 in a group?

19 A. There were five males that were together it appeared.

20 Q. When you say together, what do you mean?

21 A. Not walking at great distances, they were grouped close.

22 Q. Okay. And when Officer Bissonnette turned the car into  
23 Mildred, who was closest to that group of individuals?

24 A. I was.

25 Q. And did you make a decision as to what you were going to

1 do?

2 A. Yes.

3 Q. Tell us.

4 A. I exited the vehicle and I made a brief interaction with  
5 the group.

6 Q. And do you recall why it was that you wanted to speak to  
7 them?

8 A. Just to inquire whether or not, as they were the first  
9 people that we encountered, if they saw the fight to which we  
10 were responding.

11 Q. Okay. And did you get any information from them?

12 A. One person I believe answered in the negative that they  
13 didn't see a fight.

14 Q. And as you were talking to these individuals, did  
15 something else catch your eye?

16 A. Yes.

17 Q. Tell us.

18 A. There was two additional officers that responded.

19 Q. Who was that, do you remember?

20 A. It was Officer Jeffrey Driscoll and David Bridges.

21 Q. And where did you see them go?

22 A. Jeffrey Driscoll was to my right, and I saw him run behind  
23 my back.

24 Q. And when you saw him run, in which direction did he run  
25 in?

1 A. Down Mildred Ave. away from Norfolk Street.

2 Q. So, putting Exhibit 5.7 on the board, could you put an X  
3 in the approximate position that you were if you could see it  
4 on this map.

5 A. It would almost be off screen, but it was approximately  
6 where the crosswalk is.

7 Q. Okay. And which way did Officer Bridges run?

8 A. It was Officer Driscoll that ran.

9 Q. Oh, Officer Driscoll, I'm sorry.

10 A. Yes.

11 Q. Which way did he run?

12 A. It would have been behind the car down towards Mildred  
13 Ave. Should I draw it on the screen, sir?

14 Q. Sure.

15 A. Down Mildred Ave. away from Norfolk Street, but it would  
16 have been around that vehicle.

17 Q. Did you see anybody else in that area when you turned  
18 around and saw him run?

19 A. Yes.

20 Q. Who?

21 A. Officer Bissonnette, Officer Bridges at that point and an  
22 individual who was unknown to me at the time.

23 Q. What was happening?

24 A. On the junction box that I can see here is a brown, what I  
25 believe to be an electrical junction box, I saw

1       Officer Bissonnette holding the individual, his arms kind of  
2 pinned to his chest in looked like a struggle.

3       Q.     And so based on that, what did you do?

4       A.     I then ran to assist.

5       Q.     Okay. And when you got there, where were  
6       Officer Bissonnette and the individual who he was struggling  
7       with?

8       A.     Still against that brown junction box.

9       Q.     And the other two officers were in the area as well?

10      A.     They were there as well.

11      Q.     Everybody standing up?

12      A.     Yes.

13      Q.     By the way, do you see the individual that  
14       Officer Bissonnette was struggling with in the courtroom today?

15      A.     I do.

16      Q.     Could you point him out, please, and describe what he's  
17       wearing.

18      A.     He's the gentleman in the white shirt seated at the table  
19       with braids.

20            MR. WORTMANN: Your Honor, if the record could reflect  
21       that Officer Finn has identified the defendant, King Belin.

22            THE COURT: Yes.

23      Q.     Now, once you got over to the junction box, there are now  
24       five of you. What happens next?

25      A.     The individual who was unknown to me was hunched over with

1       his hands no longer at his chest area but at his waist, he was  
2 hunched over, and Officer Bridges and Officer Bissonnette were  
3 trying to pull his hands from behind him.

4       Q.     Do you recall anybody saying anything to Mr. Belin?

5       A.     Yes, I do.

6       Q.     What do you recall them saying?

7       A.     Officer Bissonnette was repeatedly saying, "King, relax,  
8 King, relax."

9       Q.     Did that appear to have any effect on Mr. Belin?

10      A.     No, it did not.

11      Q.     What was he doing?

12      A.     Still maintaining that posture where his hands were firm  
13 against his waist and hunched over.

14      Q.     How does all this get resolved?

15      A.     Eventually Mr. Belin and three officers went to the  
16 ground, and his hands were removed from underneath him and  
17 placed in handcuffs.

18      Q.     Now, when Mr. Belin went to the ground, where were you  
19 standing?

20      A.     Sort of straddling his back legs -- his legs from on top  
21 of him.

22      Q.     So you were directly on top of him?

23      A.     Yes.

24      Q.     And did you see him get cuffed up?

25      A.     Yes.

1 Q. And did you see Officer Bissonnette begin to turn  
2 Mr. Belin over?

3 A. Yes.

4 Q. And what's the next thing that you heard?

5 A. "Gun, gun."

6 Q. What's the next thing you saw?

7 A. A firearm in Officer Bissonnette's hand.

8 Q. And how long after you heard "gun" did you see the gun in  
9 Officer Bissonnette's hand?

10 A. Within seconds.

11 Q. Were you ever actually able to see him pull it out from  
12 the waistband?

13 MR. GARRITY: Objection, leading.

14 THE COURT: This one I'll allow. Overruled.

15 A. I'm sorry.

16 Q. Did you actually see him pull it out from the waistband?

17 A. No.

18 Q. Now, once the firearm was recovered, what was done with  
19 Mr. Belin?

20 A. He was transported -- oh, a search of Mr. Belin was  
21 conducted.

22 Q. And did you assist in that search?

23 A. Yes, I did.

24 Q. Who was helping you?

25 A. Officer Martin Velez.

1 Q. Did you see Officer Velez pull something from one of  
2 Mr. Belin's pockets?

3 MR. GARRITY: Objection, leading.

4 MR. WORTMANN: Strike that, I'll rephrase.

5 Q. Did you see anything recovered?

6 A. Yes.

7 Q. What?

8 A. It was a Newport cigarette pack.

9 Q. And where was it recovered from?

10 A. His right pants pocket, front pants pocket.

11 Q. When Officer Velez pulled out that cigarette pack, what  
12 did he do with it?

13 A. He handed it to me.

14 Q. Did you notice anything unusual about it?

15 A. Yes, I did.

16 Q. What?

17 A. Its weight was inconsistent with a pack of cigarettes, and  
18 it also had a plastic bag that was protruding from the top.

19 Q. So what did you do?

20 A. I inspected the bag and the cigarette pack.

21 Q. What did you find inside the bag?

22 A. Five rounds of ammunition.

23 Q. And, Officer Finn, what did you do with the cigarette  
24 pack, the plastic bag and the ammunition?

25 A. I provided that to detectives who arrived on scene,

1 Detective Magoon.

2 MR. WORTMANN: That's all I have, your Honor, thank  
3 you.

4 CROSS-EXAMINATION

5 BY MR. GARRITY:

6 Q. Good morning, Officer Flynn. I'm sorry, I think I called  
7 you Flynn. You're familiar with Norfolk Park, is that right?

8 A. Yes, I am.

9 Q. You've been there a bunch of times?

10 A. Yes.

11 Q. Mildred Avenue from the corner where you and  
12 Officer Bissonnette pulled over, there's an entrance right  
13 there to the park?

14 A. At which point?

15 Q. It's right there. Is that the entrance to the park?

16 A. I believe there's actually two entrances. I could be  
17 mistaken, but I think there's one directly behind that junction  
18 box as well.

19 Q. Where this woman with the coat is?

20 A. Just in front of her, towards -- away from Norfolk Street,  
21 I believe there's two entrances there.

22 Q. There's one on the right-hand side of the junction box; is  
23 that right?

24 A. Yes, sir.

25 Q. And one right here?

1 A. Yes.

2 Q. And just getting back to what brought you and  
3 Officer Bissonnette there, you heard dispatch call in about a  
4 fight among girls at Norfolk and Fessenden Street?

5 A. Yes.

6 Q. And you and Officer Bissonnette are on your way to Walk  
7 Hill Street?

8 A. That's correct.

9 Q. And you decide to assist in this one; is that right?

10 A. That's correct.

11 Q. And Fessenden Street is across the street but a little  
12 kind of like diagonally across?

13 A. Yes.

14 Q. And when you get to that area, rather than go on Fessenden  
15 Street, Officer Bissonnette turns the cruiser or the car onto  
16 Mildred Avenue, right?

17 A. That's correct.

18 Q. And before Officer Bissonnette pulled over, you saw these  
19 five individuals coming down Norfolk Street?

20 A. Yes.

21 Q. And you had a brief view of them before  
22 Officer Bissonnette pulled over?

23 A. View?

24 Q. Right.

25 A. Yes.

1 Q. Really brief view, is that fair to say?

2 A. Yes, sir.

3 Q. And the sidewalk as you come down Norfolk Street there is  
4 it fair to say pretty narrow?

5 A. It's an average width, I'd say.

6 Q. Average width of a regular sidewalk?

7 A. Yes.

8 Q. Not wide enough to have five individuals walking side by  
9 side, right?

10 A. I don't know, it depends on the individual.

11 Q. Well, you eventually spoke to four of these individuals,  
12 right?

13 A. Yes.

14 Q. And fair to say most of them were around 6 feet tall?

15 A. I don't recall.

16 Q. Well, they weren't small, right?

17 A. I don't recall those four.

18 Q. Do you recall what they were wearing?

19 A. I don't.

20 Q. Did they have on to your memory different clothing than  
21 what Mr. Belin had on?

22 A. I don't remember.

23 Q. Have you seen any FIOD cards that were done on these  
24 individuals?

25 A. I think the night the report was processed.

1 Q. You saw those cards?

2 A. I believe so, yes.

3 Q. And those cards were on the four individuals you were  
4 speaking with?

5 A. I had an interaction with one male. The group that were  
6 approaching Norfolk Street and Mildred Ave. were the same four  
7 that were FIO'd.

8 Q. And those FIO cards indicate they were all wearing  
9 sweatshirts, right, or hoodies?

10 A. I don't know. I don't remember the FIO cards.

11 Q. If I showed those cards to you, would that refresh your  
12 recollection?

13 A. Yes.

14 MR. GARRITY: May I approach, your Honor?

15 THE COURT: Yes.

16 Q. I show you those documents. Are those the FIO cards we're  
17 talking about?

18 A. No. These are FIO cards from a database, but they're not  
19 the FIO forms that were filled out by the officer who would  
20 have stopped them that night.

21 Q. There's a different form than that?

22 A. There's a physical paper form that is a notepad type of  
23 form.

24 Q. Is that an accurate reflection of what was on those cards?

25 A. It should be as it's entered, yes.

1 Q. Why don't you take a look at that and see if it helps  
2 refresh your recollection as to what they might have been  
3 wearing?

4 A. There's only three here.

5 Q. Of the three that are there?

6 A. It indicates gray hooded sweat, a blue hoodie and a black  
7 hoodie as it's recorded here.

8 Q. And the photograph that's in front of you shows a woman  
9 right by that brown electrical box, right?

10 A. It's hard to see. I can't tell if it's a woman or not.

11 Q. If I showed you the actual photo, would that help?

12 A. Sure, if I can make it out.

13 MR. GARRITY: May I approach, your Honor?

14 THE COURT: Yes.

15 Q. It's Exhibit 5.7. Does that look like a woman right to  
16 the left of that box wearing a coat?

17 A. Yes. Well, there's another woman it appears on the top  
18 corner as well, but, yes, it does appear to be a woman by that  
19 box.

20 Q. Wearing a coat?

21 A. Yes.

22 Q. And you said you spoke to one of the individuals of the  
23 five you initially saw walking down Norfolk, right?

24 A. Yes.

25 Q. And you didn't spend a whole lot of time with them before

1 you ran over towards the brown electrical box?

2 A. That's correct.

3 Q. Would it be fair to say seconds?

4 A. Yes.

5 Q. And you didn't see -- the first time you see the gun is  
6 when it's in Officer Bissonnette's hand, right?

7 A. That's correct.

8 Q. And it was Officer Felez that searches Mr. Belin?

9 A. Velez.

10 Q. Velez, I'm sorry, he's the one that searches Mr. Belin,  
11 right?

12 A. Yes.

13 Q. He's the one that reaches into his pockets?

14 A. That's correct.

15 Q. And where were you when Officer Velez was doing that?

16 A. Standing to his right.

17 Q. And how long did you stay at the scene before you leave?

18 A. Approximately 15 minutes, 10 to 15 minutes.

19 Q. And do detectives arrive on the scene before you leave?

20 A. Yes.

21 Q. And is it Detectives Magoon and Josey that show up?

22 A. That's correct.

23 Q. Detective Magoon takes photographs?

24 A. I don't know if it was Detective Magoon or Detective Josey  
25 who took photographs.

1 Q. The cigarette pack, do you hand that over to  
2 Detective Josey or Detective Magoon?

3 A. Magoon.

4 Q. There were other individuals in a park; is that fair to  
5 say?

6 A. Yes.

7 Q. Did you make any attempts to interview those individuals?

8 A. I did not.

9 Q. There's a school right around the corner. Put 5.7 up  
10 again. The corner right at the bottom; do you see that?

11 A. Yes.

12 Q. Right around the corner is the Mildred Avenue School?

13 A. Yes.

14 Q. Did you make any attempts to get any kind of security or  
15 video footage from that school?

16 A. I did not.

17 Q. Are you aware as to whether or not there's a video camera  
18 on Norfolk Street near the park?

19 A. I am aware of that, yes.

20 Q. It's right in between the two basketball courts, right?

21 A. Correct.

22 Q. Did you make any attempts to get video footage from that  
23 surveillance camera?

24 A. No.

25 Q. To your knowledge, did any officer from the Boston Police

1       Department make attempts to get video footage from that camera?

2       A.     I don't know.

3       Q.     Have you seen any video footage of this incident that was  
4            taken from that camera?

5       A.     No.

6       Q.     And you wrote the report in this case, right?

7       A.     I did.

8       Q.     The incident report?

9       A.     Yes.

10      Q.     Do you recall when you wrote it?

11      A.     I don't have that committed to memory, the same night, but  
12           I don't know how long after the incident.

13      Q.     Where did you write it, if you recall?

14      A.     At the district station.

15      Q.     Did you write it by yourself?

16      A.     There were other officers in the room.

17      Q.     But did you draft it yourself?

18      A.     Yes.

19      Q.     And the other officers in the room, do you recall who they  
20           were?

21      A.     No.

22      Q.     Did you write any notes at the scene?

23      A.     No.

24      Q.     Did you see whether or not Officer Bissonnette or any  
25           other officer wrote notes?

1 A. No.

2 Q. And when you wrote the report, were you sitting down at a  
3 computer or did you handwrite it?

4 A. No, I had a computer, sir.

5 Q. You had a computer?

6 A. Yes.

7 Q. And you wrote it up?

8 A. Yes.

9 Q. And did you submit that to your supervisor?

10 A. Yes.

11 Q. And who was your supervisor, if you recall?

12 A. I don't recall.

13 MR. GARRITY: Can I have one second, your Honor?

14 THE COURT: Yes.

15 MR. GARRITY: No further questions, your Honor.

16 THE COURT: Redirect.

17 REDIRECT EXAMINATION

18 BY MR. WORTMANN:

19 Q. Did you consult with Officer Bissonnette when you wrote  
20 the report?

21 A. Yes.

22 MR. GARRITY: Objection. Leading.

23 THE COURT: Sustained, the answer will be struck.

24 Q. Who did you consult when you were writing the report?

25 A. Officers Bissonnette, Bridges and Driscoll.

1 Q. And do you know what Officer Bissonnette was doing while  
2 you were writing the report?

3 A. I can't say with certainty, but I believe he was booking  
4 the prisoner.

5 MR. WORTMANN: And if I could approach, your Honor?

6 THE COURT: Yes.

7 Q. Just showing you what was marked as Exhibit 5.6, do you  
8 see a female dressed in it looks like pink?

9 A. Yes.

10 Q. What does she appear to be wearing?

11 A. Blue jeans and a short sleeve pink T-shirt.

12 MR. WORTMANN: That's all I have, your Honor, thank  
13 you.

14 THE COURT: Recross.

15 RECROSS-EXAMINATION

16 BY MR. GARRITY:

17 Q. So Officer Bissonnette was booking a prisoner or was he  
18 booking Mr. Belin?

19 A. As far as my memory serves me, it was Mr. Belin, not a  
20 separate prisoner. I can't remember if it was Mr. Bissonnette  
21 that was booked.

22 Q. Was he in a separate room?

23 A. There's a booking area of the station, yes, separate room  
24 from the report writing room.

25 Q. And you weren't talking to him over the phone, I take it?

1 A. No.

2 Q. Did you and he drive back to the station together?

3 A. As far as I recall, yes.

4 Q. You handed your report to your supervisor, right?

5 A. We submit it electronically, yes.

6 Q. You didn't hand it to Officer Bissonnette before you  
7 handed it to or e-mailed it to your supervisor, right?

8 A. No.

9 Q. Did you talk about the events on the way to the station?

10 A. I don't remember.

11 Q. And he wasn't next to you when you were writing the  
12 report?

13 A. I don't know if he was in the room while I was writing the  
14 report or not, I don't remember.

15 Q. Just in terms of what people may have been wearing that  
16 night, I show you Exhibit 5.5. Do you see that in front of  
17 you?

18 A. Yes, sir.

19 Q. This individual here, do you see what -- can you see what  
20 they're wearing?

21 A. I can't, the lighting on the screen is difficult to see.

22 Q. If I showed you the actual photograph, would that help?

23 A. Yes, sir.

24 MR. GARRITY: May I approach, your Honor?

25 THE COURT: Yes.

1 Q. Again, that's Exhibit 5.5. Does that individual appear to  
2 be wearing a red hoodie?

3 A. It does appear that way, yes.

4 Q. And would it be fair to say that September 17th was a  
5 fairly typical September late afternoon in terms of  
6 temperature?

7 MR. WORTMANN: Objection.

8 THE COURT: I'll let him answer. I assume you're not  
9 asking for a weather statistic --

10 MR. GARRITY: Right.

11 THE COURT: -- just impression. Overruled.

12 A. September weather can vary, so I don't know what you mean  
13 by typical September weather.

14 Q. Well, people have varying types of clothes on that day,  
15 right?

16 A. Yes, sir.

17 Q. People with hoodies, people with coats, people with  
18 T-shirts?

19 A. I can't say with certainty coats, but certainly the other  
20 items that you described, yes.

21 Q. And we did see that one photograph of the individual  
22 wearing what appears to be a white long coat, right?

23 A. It appears to be a coat, yes.

24 MR. GARRITY: I have no further questions.

25 MR. WORTMANN: Your Honor, can I have one.

1                   THE COURT: All right.

2                   REDIRECT EXAMINATION

3                   BY MR. WORTMANN:

4                   Q. Was Officer Bissonnette given an opportunity to read the  
5 report before it was submitted?

6                   A. Yes.

7                   MR. GARRITY: Objection. Leading.

8                   THE COURT: Overruled.

9                   MR. WORTMANN: That's all I have, your Honor.

10                  THE COURT: Anything further, Mr. Garrity?

11                  MR. GARRITY: No, your Honor.

12                  THE COURT: All right, you may step down.

13                  THE WITNESS: Thank you, your Honor.

14                  MR. WORTMANN: Detective Magoon to the stand, please.

15                  KEVIN MAGOON, having been duly sworn by the Clerk,  
16 testified as follows:

17                  DIRECT EXAMINATION

18                  BY MR. WORTMANN:

19                  Q. Sir, could you tell us your name, please, spelling your  
20 first and last name for the record.

21                  A. Kevin, K-e-v-i-n M-a-g-o-o-n.

22                  Q. Where do you work, sir?

23                  A. Boston Police Department, Area B-3 in Mattapan.

24                  Q. For how long?

25                  A. I've been there ten years.

1 Q. And what's your current rank?

2 A. Detective.

3 Q. How long have you held the rank of detective?

4 A. Ten years.

5 Q. Have you been assigned to District B-3 for that entire  
6 period?

7 A. Yes.

8 Q. Generally, sir, could you describe for the ladies and  
9 gentlemen of the jury your responsibilities as a detective  
10 assigned to a district?

11 A. I respond to general investigations for assaults,  
12 shootings, home breaks, larcenies.

13 Q. And do you have any specific defined responsibilities  
14 whenever a gun is recovered in any case on the street?

15 A. We do, yes.

16 Q. And what are they?

17 A. We'll go to the scene, photograph it and recover it.

18 Q. And what else?

19 A. We'll process it and send it to ballistics.

20 Q. Okay. And whose responsibility is it to take control of  
21 the evidence, specifically a gun and any ammunition?

22 A. We, as the detectives, when we respond, we will take  
23 custody of it.

24 Q. Now, let me ask you a question, Detective Magoon. Have  
25 you ever allowed a gun to stay in the possession of a suspect

1 so it could be photographed with that person in custody of the  
2 gun?

3 A. No.

4 Q. Why wouldn't you do that?

5 A. Leave a loaded gun on a suspect to take a photograph?

6 Q. Yes.

7 A. It's dangerous.

8 Q. Let's talk September 17th, 2012. Were you working that  
9 night?

10 A. Yes, I was.

11 Q. What shift, sir?

12 A. I was working the first half, 4 p.m. to 11:45.

13 Q. Some time after 6:45, did you receive a call regarding a  
14 recovered gun?

15 A. Yes.

16 Q. And where was that call? Where did you respond to?

17 A. Norfolk Street at Norfolk Park.

18 Q. And who did you meet up with when you got there?

19 A. When myself and Detective Windell Josey responded there,  
20 we met with other Boston Police Area B-3 units.

21 Q. Okay. What, if anything, did you recover while you were  
22 on scene?

23 A. We recovered a firearm.

24 Q. Yes. What else?

25 A. Magazine, there was an additional five round cartridges of

1 ammunition.

2 Q. And where were those additional five rounds of ammunition,  
3 how were they stored?

4 A. They were stored inside a plastic bag which was placed  
5 inside a Newport cigarette box.

6 Q. All right. And who collected the firearm and the extra  
7 bag of ammunition?

8 A. From the defendant?

9 Q. From the police officers?

10 A. Detective Josey did.

11 Q. Okay. And when did you come in contact with the firearm  
12 and the ammunition?

13 A. When we returned to Area B-3 with the firearm, I took  
14 custody of it, and I fumed the weapon.

15 Q. All right. Can you tell the ladies and gentlemen of the  
16 jury what fuming means?

17 A. Fuming is a process where we have a chamber at the  
18 station, it's like a fish tank, and inside this chamber there  
19 are two heating elements. We place a glue on the heating  
20 element, a Krazy Glue, we place whatever the item is that we're  
21 fuming inside this tank. The heating element heats the glue,  
22 which creates a vapor, and that vapor will attach to any  
23 fingerprints that may be on whatever the item is that you're  
24 fuming.

25 Q. And what did you fume in this case?

1 A. I fumed the firearm, the magazine, and I believe that was  
2 it, yeah, the firearm and the magazine.

3 Q. And once the fuming had been done of the firearm and the  
4 magazine, what did you do with the evidence?

5 A. It was photographed, placed in a gun box, and it was  
6 forwarded to the ballistics and latents unit.

7 MR. WORTMANN: May I approach, your Honor?

8 THE COURT: Yes.

9 Q. First, I'm showing you what's been admitted as  
10 Exhibit 6.1. Do you recognize that?

11 A. Yes.

12 Q. And can you tell us what it is?

13 A. This is the recovered firearm that I fumed at Area B-3.

14 Q. On September 17th, 2012?

15 A. Yes.

16 Q. And how do you know it's the same gun?

17 A. This is my markings, this is my bar code, this is -- I  
18 placed this on the firearm.

19 Q. And the bar code contains an individualized number?

20 A. Yes, it does.

21 Q. And what's that number called in the document?

22 A. It is referred to as a CC number. It identifies the  
23 incident.

24 Q. And each incident report is assigned a separate number?

25 A. Yes.

1 Q. So you know by looking at that number that that's the gun  
2 that you recovered?

3 A. Yes.

4 Q. And showing you what's been marked for identification as  
5 Exhibit 6.2, do you recognize that, sir?

6 A. Yes.

7 Q. And what is that?

8 A. That is my handwriting, and this is the cartridges that I  
9 removed from the magazine and from the chamber of the firearm.

10 Q. And when did you make the gun safe?

11 A. I'm not sure if Windell, Detective Josey, made the gun  
12 safe on scene or back at the station.

13 Q. But that's your handwriting?

14 A. That's my handwriting, yes.

15 Q. And those are the cartridges you took that were collected  
16 along with this gun?

17 A. Yes.

18 Q. And third, sir, I ask you to take a look at Exhibit 6.3.

19 Do you recognize that?

20 A. Yes.

21 Q. What is that?

22 A. This is also my handwriting. This was the plastic bag  
23 that the additional five cartridges were located in.

24 Q. And how do you know that these are the same bullets that  
25 came out of the plastic bag that was in the Newport box?

1 A. I'm the one that removed those from the plastic bag.

2 Q. And do we also see the same CC number?

3 A. Yes.

4 Q. And is that in your writing?

5 A. The CC number and that's my writing.

6 MR. WORTMANN: Your Honor, I'd offer Exhibit 6.3 into  
7 evidence.

8 MR. GARRITY: Just the prior objection, Judge.

9 THE COURT: All right. That objection is overruled.

10 It may be admitted, Exhibit 6.3.

11 (Exhibit No. 6.3 was admitted into evidence.)

12 Q. Now, you also indicated that before you closed up the  
13 evidence, that you took pictures of the firearm and the  
14 ammunition?

15 A. Yes.

16 Q. I'm showing you what's been marked as Exhibits 7.1 to 7.7.  
17 I'm going to ask if you take a look at that and if you  
18 recognize those pictures?

19 A. Yes.

20 Q. And --

21 A. That's my writing on the cover for the photographs, the  
22 location date, respond to Detectives Magoon and Josey. This is  
23 the firearm and the box, firearm make, make, obliterated serial  
24 numbers, photographs of the recovered cartridges.

25 Q. And that includes both the eleven that were taken from the

1 gun and the five in the bag?

2 A. Yes, and here's photographs of the five that were in the  
3 back.

4 MR. WORTMANN: Your Honor, I offer 7.1 to 7.7 into  
5 evidence.

6 MR. GARRITY: No objection.

7 THE COURT: They may be admitted, Exhibits 7.1 through  
8 7.7.

9 (Exhibit Nos. 7.1 through 7.7 was admitted into  
10 evidence.)

11 Q. If I could just briefly, what's this called?

12 A. When you take photographs, before you take the first  
13 photograph, you fill out a placard, which you have the date on  
14 the top, the location, Norfolk at Mildred Ave., the CC number,  
15 which is the unique number for the incident.

16 Q. That's that number right there?

17 A. Yeah, the 120584284, and then myself, Magoon and  
18 Detective Josey's names.

19 Q. And Exhibit 2, 7.2, that includes what?

20 A. That's the firearm, magazine, recovered cartridges and a  
21 Newport cigarette box.

22 Q. Do you know what happened to the Newport cigarette box?

23 A. I do not. I did not enter into evidence because it was  
24 handled by several officers prior to coming into my custody, so  
25 it wasn't entered into any type of testing.

1 Q. 7.3 is?

2 A. That's a photograph of the make and model of the firearm.

3 Q. 7.4?

4 A. Place of manufacture.

5 Q. 7.5?

6 A. Obliterated serial number.

7 Q. And, again, if we look at the handle of the gun, you can  
8 see the same thing on the actual firearm, 6.1?

9 A. Yes.

10 Q. 7.6?

11 A. Cartridges that were recovered.

12 Q. Okay. Finally Exhibit 7.7?

13 A. Those are the five individual cartridges that were located  
14 on that Newport box.

15 Q. Did you leave those in the plastic bag, sir?

16 A. Yes, they stayed in the bag.

17 Q. All right. Now --

18 MR. WORTMANN: May I approach again, your Honor?

19 THE COURT: Yes.

20 Q. Once you finished photographing and processing items 6.1,  
21 6.2 and 6.3, that's the firearm and the 16 rounds of  
22 ammunition, what did you do with it?

23 A. They were fumed, they were placed in this box, the box was  
24 sealed, I initiated it, dated it and I forwarded it to the  
25 ballistics and latent unit.

1 Q. And how do you know this is the same box?

2 A. This is all my writing. I'm the one that sealed it.

3 Q. And does it indicate the CC number that is the CC number  
4 assigned to this case?

5 A. Yes.

6 MR. WORTMANN: Your Honor, I offer the box as  
7 Exhibit 6.4.

8 MR. GARRITY: No objection.

9 THE COURT: It may be admitted 6.4.

10 (Exhibit No. 6.4 was admitted into evidence.)

11 MR. WORTMANN: I have nothing else for this witness at  
12 this time. Thank you, your Honor.

13 THE COURT: All right. We might as well take our  
14 12:00 break early. We'll take a very quick recess.

15 THE CLERK: All rise for the jury.

16 (A recess was taken.)

17 THE CLERK: All rise for the jury.

18 (JURORS ENTERED THE COURTROOM.)

19 THE CLERK: Thank you. You may be seated.

20 THE COURT: Mr. Garrity, cross-examination.

21 CROSS-EXAMINATION

22 BY MR. GARRITY:

23 Q. Good afternoon, Detective.

24 A. Good afternoon.

25 Q. You and Detective Josey went to the scene; is that right?

1 A. Yes.

2 Q. And you photographed the scene; is that right?

3 A. Yes.

4 Q. And Detective Josey, he took possession of the gun and the  
5 ammunition; is that right?

6 A. Yes.

7 Q. So Officer Bissonnette did not hand you a gun?

8 A. No.

9 Q. And are you familiar with that area, Norfolk Park?

10 A. Yes.

11 Q. How long have you been a detective in B-3?

12 A. Ten years.

13 Q. And were you a patrol officer before that?

14 A. No, I did my patrol in Roxbury in District 4 and the south  
15 end.

16 Q. But ten years in District B-3?

17 A. Ten years in District 3 and 14 years in Roxbury and the  
18 south end.

19 Q. So you are very familiar with Norfolk Park?

20 A. Yeah.

21 Q. And there's a video camera there by the basketball courts?

22 A. There may be, I'm not sure. We do have cameras and short  
23 spotters in the area. I'm not sure of all the locations.

24 Q. And short spotters, are they sound or sound-activated?

25 A. Yes.

1 Q. But there are other cameras there as well that record?

2 A. I'm not sure of that.

3 Q. Were you asked to obtain any video surveillance from  
4 Norfolk Park at all with respect to this event?

5 A. No.

6 Q. And are you familiar with the Mildred Avenue School?

7 A. Yes.

8 Q. Were you asked to obtain any video surveillance footage  
9 from that school?

10 A. No.

11 Q. And that's right on the corner as you come down Mildred  
12 Avenue?

13 A. When you go down Mildred, you take the right, it's right  
14 there on the left-hand side.

15 Q. And you've been a member of the Boston Police Department  
16 for over 20 years; is that right?

17 A. Twenty-four years.

18 Q. And there are rules and procedures you're supposed to  
19 follow; is that right?

20 A. Yes.

21 Q. They're laid out in written directives and written rules?

22 A. Yes.

23 Q. And there's a specific rule, isn't there, about how to  
24 handle handgun evidence or firearm evidence?

25 A. Yes.

1 Q. Do you recall what that rule contains?

2 A. No.

3 Q. If I were to show it to you, would it help refresh your  
4 recollection?

5 A. I could read it for you. I'm sure it's a lengthy rule.

6 MR. GARRITY: May I approach, your Honor?

7 THE COURT: Yes.

8 Q. I'm not going to ask you to read the whole thing.

9 A. Okay. Yeah.

10 Q. Just I guess the first page there. Just read it to  
11 yourself, see if it refreshes your recollection.

12 A. Okay, sure.

13 Q. Have you had a chance to look at it?

14 A. Yeah.

15 Q. The rule starts out, doesn't it, with a section that says,  
16 "With handguns, you're supposed to be especially vigilant in  
17 following the rules," do you see that there, the top section?

18 A. Yeah.

19 Q. And the bottom section talks about an officer who comes  
20 into possession of a handgun, right?

21 A. Yes.

22 Q. Or takes possession of a handgun?

23 A. Yes.

24 Q. What they're supposed to do?

25 A. Yes.

1 Q. And an officer who comes into possession of a gun is  
2 supposed to write an incident report, right?

3 A. Yes.

4 Q. And I'm not talking about you, you wrote an investigation  
5 report, right?

6 A. Yes.

7 Q. And that's separate from an incident report?

8 A. Yes.

9 Q. And an officer who comes into possession of a gun is  
10 supposed to fill out another form, are they not?

11 A. No, that was my responsibility. I'm the officer that came  
12 in possession of it and processed it, that's what I did. The  
13 evidence submission form, is that what you're getting at?

14 Q. Right, that form after the incident.

15 A. Evidence submission form, I filled that out.

16 Q. Is that BPD with a number on it, the form there do you  
17 see?

18 A. Final submission form BPD, Form 2419?

19 Q. Right. Did you fill that out?

20 A. Yes.

21 Q. But the incident report is supposed to be filled out by  
22 the officer who takes possession of it, right?

23 A. No, the responding officers that made the arrest, either  
24 the driver or the observer. One drives, the observer usually  
25 writes the report, so one of those two officers would have

1 wrote the report.

2 Q. An observer writes the report?

3 A. Normally in a two-car situation, the operator of the  
4 vehicle drives the car, and the observer, the passenger, would  
5 write all the reports for the course of the tour of duty.

6 Q. But the rule says the officer who comes into possession is  
7 supposed to write the report, right?

8 A. It says, "Firearms come into possession of police  
9 officers, whenever a firearm comes into the possession of a  
10 police officer, the officer shall complete an incident report,  
11 a firearm submission form and the firearms analysis examining  
12 unit log form."

13 Q. And if the observer doesn't observe the event, it should  
14 be the officer who takes possession of the gun, right?

15 MR. WORTMANN: Objection, your Honor.

16 THE COURT: You're saying what do the rules call for?

17 MR. GARRITY: Right.

18 THE COURT: I'll allow it, go ahead.

19 A. Knowledge of one is knowledge of all. Either one of them  
20 could have wrote the report, either one of the two officers.

21 Q. Does the rule allow for that?

22 A. Yeah, it's common.

23 Q. It's in there?

24 A. Firearms come into the possession of police officers, it  
25 doesn't specify who. Are you asking who is supposed to write

1 the report out of the two?

2 Q. Right.

3 A. Either one of them could have written the report.

4 Q. Does it say who?

5 A. It says police officers, plural.

6 Q. Does it say the officer who took possession of it?

7 A. That would be me, I took possession of it.

8 MR. GARRITY: May I approach, your Honor?

9 THE COURT: Yes.

10 Q. It starts out, "Section 3, firearms coming into possession  
11 of police officers:" Right?

12 A. Uh-hum.

13 Q. "Whenever a firearm comes into the possession of a police  
14 officer," singular, "the officer shall complete an incident  
15 report," right?

16 A. Yeah.

17 Q. That's what the rule says?

18 A. That's what they did, yeah.

19 Q. That's what the rule says?

20 A. Yes.

21 Q. And the officer coming into possession of the gun in this  
22 case was Officer Bissonnette, right?

23 A. Yes.

24 MR. GARRITY: I have no further questions.

25 THE COURT: Redirect.

1                   MR. WORTMANN: If I could have just a moment, your  
2 Honor?

3                   THE COURT: Yes.

4                   REDIRECT EXAMINATION

5 BY MR. WORTMANN:

6 Q. How many police reports have you read regarding recovery  
7 of firearms?

8 A. I have no -- I couldn't even guess.

9 Q. Well, let me ask you, is it the practice that only the  
10 officer who seizes the gun writes the report?

11 A. No.

12                  MR. WORTMANN: I have nothing else. Thank you, your  
13 Honor.

14                  THE COURT: Mr. Garrity.

15                  RECROSS-EXAMINATION

16 BY MR. GARRITY:

17 Q. Do the Boston Police Department rules and procedures start  
18 out with a requirement that every officer is supposed to follow  
19 the rules?

20 A. Yes.

21                  MR. GARRITY: I have no further questions.

22                  THE COURT: Thank you. You may step down.

23                  MR. WORTMANN: The government calls Brandon McClellan  
24 to the stand.

25                  BRANDON McCLELLAN, having been duly sworn by the

1 Clerk, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WORTMANN:

4 Q. Sir, would you identify yourself, please.

5 A. Yes, my name is Brandon McClellan.

6 Q. Spell the last and first name, please.

7 A. B-r-a-n-d-o-n, McClellan, M-c-C-l-e-l-l-a-n.

8 Q. What do you do for a living?

9 A. I'm a probation officer.

10 Q. And how long have you been a probation officer?

11 A. Approximately 14, 14 years.

12 Q. And where are you presently assigned, sir?

13 A. I'm presently assigned to the Plymouth Superior Court out  
14 of Brockton, Massachusetts.

15 Q. And how long have you been in Brockton?

16 A. A little over a year.

17 Q. Prior to that, where were you?

18 A. I was employed by Suffolk Superior Court in Boston,  
19 Massachusetts.

20 Q. For how long?

21 A. For about 13 years.

22 Q. And can you describe generally what your responsibilities  
23 were as a probation officer in the Suffolk Superior Court?

24 A. Sure. Our main function is to enforce all orders handed  
25 down by the Court on individuals placed on probation.

1 Q. Are you given a particular caseload that becomes your  
2 responsibility?

3 A. That's correct.

4 Q. Now, in connection with your work at Suffolk Superior, did  
5 you become familiar with someone named King Belin?

6 A. Yes, I did.

7 Q. Who is Mr. Belin?

8 A. He was someone I supervised on probation.

9 Q. And did he come under your supervision following a  
10 conviction that he had for two crimes punishable for a period  
11 in excess of one year?

12 A. That is correct, sir, yes.

13 Q. And do you see the person who you know to be King Belin  
14 who was on probation before you beginning in 2010?

15 A. I do.

16 Q. Could you point him out, please?

17 A. Yes. He's sitting to my left. He's the gentleman with  
18 the braided hair wearing a white shirt at defense counsel  
19 table.

20 MR. WORTMANN: Your Honor, if the record could reflect  
21 that Mr. McClellan has indicated the defendant, King Belin.

22 THE COURT: Yes.

23 Q. Now, during your time at Suffolk Superior Court, are you  
24 familiar with a document entitled supervision sheet?

25 A. I am.

1                   MR. WORTMANN: Your Honor, may I approach, please?

2                   THE COURT: Yes.

3                   Q. Showing you what's been marked for identification as  
4                   Exhibit 2, do you recognize that document?

5                   A. I do.

6                   Q. And what is it?

7                   A. It is a supervision sheet, what we also call a face sheet.  
8                   It lists an individual's particulars, including their name,  
9                   date of birth, their residence and what their conditions are.

10                  Q. And would you come into contact with that when you first  
11                  undertook the responsibility of supervising a particular  
12                  defendant?

13                  A. Yes.

14                  Q. Who does this supervision sheet relate to?

15                  A. Mr. King Belin.

16                  Q. Is that the sheet you received when you began supervising  
17                  Mr. Belin?

18                  A. Yes.

19                  Q. And is that your signature on the bottom?

20                  A. Yes, on the bottom that is my signature.

21                  MR. WORTMANN: Your Honor, I offer the supervision  
22                  sheet as Exhibit Number 2.

23                  MR. GARRITY: No objection.

24                  THE COURT: It may be admitted Exhibit Number 2.

25                  (Exhibit No. 2 was admitted into evidence.)

1 Q. Now, does the supervision sheet indicate the number of the  
2 case on which you were supervising him on?

3 A. It does, yes.

4 Q. And could you just tell the grand jury -- sorry, tell the  
5 ladies and gentlemen of the jury what that number is.

6 A. It's Suffolk County Docket Number 2009, 10693.

7 Q. I'm going to ask you to look at Exhibit Number 3 which has  
8 been introduced, which is a certified copy of a conviction, and  
9 could you let the ladies and gentlemen of the jury know what  
10 the number of that conviction is?

11 A. Yes, it is Suffolk Superior Court Criminal Docket 2009,  
12 10693.

13 Q. So the supervision sheet and the case to which the  
14 supervision sheet refers is, in fact, Exhibit 3?

15 A. Correct.

16 MR. WORTMANN: Nothing else, thank you, your Honor.

17 MR. GARRITY: No questions.

18 THE COURT: Thank you. You may step down.

19 THE WITNESS: Thank you, your Honor.

20 MR. WORTMANN: The government calls Nina Jefferson to  
21 the stand.

22 NINA JEFFERSON, having been duly sworn by the Clerk,  
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. WORTMANN:

1 Q. Tell us your name, please, ma'am.

2 A. Nina Jefferson.

3 Q. And spell it for us, just for the record.

4 A. N-i-n-a J-e-f-f-e-r-s-o-n.

5 Q. Ms. Jefferson, where do you work?

6 A. I am currently employed with the Boston Police Department.

7 Q. And where are you assigned and what do you do?

8 A. I work in the firearms analysis unit, and I am a firearms  
9 examiner.

10 Q. How long have you worked as a firearms examiner?

11 A. Approximately four years.

12 Q. And prior to that, were you a sworn officer?

13 A. Yes.

14 Q. For how long?

15 A. For about five years.

16 Q. So, in total, you've been with the Boston Police  
17 Department for approximately nine years?

18 A. Yes.

19 Q. And I take it throughout that time you've carried a gun on  
20 a regular basis?

21 A. Yes.

22 Q. Familiar with firearms?

23 A. Yes.

24 Q. Now, when you transferred to the firearms analysis  
25 section, what, if anything, did you have to do in order to

1       become a firearms examiner?

2       A.     When I got to the unit, I was put in training. I first  
3           did on-the-job training with some of the experienced firearms  
4           examiners that were already there, then the department hired  
5           some outside contractors that came in and did some training  
6           with us as well, and then I got into a year-long intensive  
7           program with the ATF, the Alcohol, Tobacco and Firearms, and I  
8           did an examiner's academy with them for one year.

9       Q.     And have you been subject to periodic testing as well?

10      A.     Yes.

11      Q.     And exactly what is it that you do as a firearms examiner?

12      A.     So the firearms analysis unit takes in all of the firearms  
13           that are taken off the streets in Boston, and in addition to  
14           the firearms, they take in any firearms-related evidence, which  
15           would mean magazine or a cartridge or a piece of ammunition,  
16           and then after we receive them in our office, we analyze them,  
17           and we draw conclusions based on the evidence that we have.

18      Q.     Okay. And at some point were you certified to be a  
19           firearms examiner with respect to both identification and  
20           operational -- operation of firearms and ammunition?

21      A.     Yes.

22      Q.     How long ago was that?

23      A.     For operability, I was signed off in June of 2012, and for  
24           identification, I was signed off in 2014.

25      Q.     And can you tell, have you been qualified as an expert in

1 firearms handling issues?

2 A. Yes, I have.

3 Q. How many times have you so testified as an expert?

4 A. I've testified about five times now.

5 MR. WORTMANN: Okay. Now, if I can approach, your  
6 Honor, please?

7 THE COURT: Yes.

8 Q. I put in front of you Exhibit 6.1, 6.2 and 6.3, and I  
9 would ask that you take a look at those, please.

10 A. Yes.

11 Q. First, with respect to Exhibit 6.1, do you recognize that  
12 firearm?

13 A. Yes, I do.

14 Q. And were you asked to perform some work on it in  
15 connection with this case?

16 A. Yes, I was.

17 Q. And can you tell the ladies and gentlemen of the jury what  
18 you did with respect to the firearm that's Exhibit 6.1?

19 A. With this firearm, I did an initial process, which we just  
20 look at the evidence, mark anything that doesn't look right,  
21 scratches, deformities. We check it to make sure that it's  
22 actually safe to even attempt to fire. We record the just  
23 general characteristics, the color, the length, the calibre,  
24 and after that I test fired the firearm.

25 Q. And based on the work that you did and your inspection of

1       it, do you have an opinion to a reasonable degree of  
2 professional certainty as to whether article 6.1, namely the  
3 firearm that's in front of you, is a weapon that's capable of  
4 expelling a projectile by reason of an explosive force?

5       A. Yes, I do.

6       Q. What is that opinion, ma'am?

7       A. My opinion is that it is a firearm.

8       Q. And could you explain to the ladies and gentlemen of the  
9 jury what the basis of your opinion is?

10      A. The basis of my opinion is that it has to dispel  
11     a -- based off of an explosion, it has to be able to dispel a  
12     bullet, and I did test firing, and I have two test fires that I  
13     used on this firearm.

14      Q. And could you explain to the ladies and gentlemen of the  
15     jury how you test fired this gun?

16      A. We test fired them by getting two rounds of ammunition  
17     that go with this gun, the same calibre, and we have a shooting  
18     room where we shoot the firearms into a water tank so that both  
19     the cartridge case and the bullet can be recovered.

20      Q. And when you loaded a round of ammunition into Article  
21     6.1, pointed it into the water tank and pulled the trigger,  
22     what happened?

23      A. When I pulled the trigger, the gun went off.

24      Q. On both occasions?

25      A. Yes.

1 Q. Did you also have the opportunity to inspect or do you  
2 recognize Exhibit 6.2 and 6.3?

3 A. 6.2 is the -- I'm not sure which.

4 MR. WORTMANN: If I could approach, your Honor, again?

5 THE COURT: Yes.

6 Q. You got it now?

7 A. Yes.

8 Q. Okay. Did you have an opportunity to inspect the contents  
9 of Exhibit 6.2 and 6.3?

10 A. Yes, I did.

11 Q. And based on that inspection, do you have an opinion as to  
12 whether the 11 items in 6.2 and the five items in 6.3 are  
13 ammunition or cartridge cases, primers, propellants, powder  
14 designed for use to shoot in a firearm?

15 A. Yes.

16 Q. And what is that opinion?

17 A. My opinion is that both 6.2 and 6.3 are both ammunition.

18 Q. And what's the basis for that opinion, ma'am?

19 A. A visual examination where you can tell that these are  
20 cartridge cases and bullets and primers that you can see  
21 visually.

22 MR. WORTMANN: Thank you. I have nothing else, your  
23 Honor.

24 THE COURT: Cross-examination.

25

## CROSS-EXAMINATION

2 BY MR. GARRITY:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. Just a couple questions. The gun we're talking about,  
6 there's a cartridge that goes into it; is that right?

7 A. Yes.

8 Q. The ammunition is inside the cartridge?

9 A. Yes, so when I say cartridge, it's a full round of  
10 ammunition.

11 Q. Right. I guess I'm talking about the casing for the  
12 ammunition.

13 A. Yes, so the cartridge would be put into the magazine, and  
14 then the magazine would be inserted into the firearm.

15 Q. Maybe I'm using the wrong lingo.

16 A. Okay, sorry.

17 Q. The magazine contains the bullets?

18 A. Yes.

19 Q. And the magazine goes into the gun?

20 A. Yes.

Q. And when it goes in, it slides in?

22 A. Yes.

Q. And it rubs up against the inside

24 right?

25 A. Yes.

1 Q. And when it's taken out, it's rubs up against the inside  
2 of the gun as well?

3 A. Yes, when you're pulling the magazine out?

4 Q. Right.

5 A. Yes.

6 Q. So it's fair to say there's not a big gap of separation  
7 between the inside of the gun and the side of the magazine, if  
8 I'm saying it right?

9 A. More likely than not, no, they're pretty much in contact  
10 with each other.

11 Q. They're rubbing against each other as it goes in?

12 A. There's probably some amount of connection between the  
13 outside of the magazine and the inside of the magazine well.  
14 That's what it's called.

15 Q. And rubbing again as it comes back out?

16 A. Yes.

17 MR. GARRITY: I have no further questions.

18 MR. WORTMANN: May I approach, your Honor?

19 THE COURT: Yes.

20 REDIRECT EXAMINATION

21 BY MR. WORTMANN:

22 Q. Taking a look at the magazine that was included in 6.1,  
23 from the visual eye, can you see a large number of scratches up  
24 and down the sides of that magazine?

25 A. Large number, probably, yes, not anything that's uncommon

1 though.

2 MR. WORTMANN: Okay. Thank you. I have nothing else,  
3 thank you, your Honor.

4 THE COURT: Anything further?

5 MR. GARRITY: Just very brief.

6 RECROSS-EXAMINATION

7 BY MR. GARRITY:

8 Q. It's common to get scratches as the magazine goes in and  
9 out?

10 A. Well, for the magazine to get seeded into the firearm, it  
11 has to go up and reach a certain point so that there's -- so  
12 that it can stay in contact with the gun and not fall out with  
13 test firing the gun or shooting the gun.

14 Q. As the magazine goes in and out, it gets some scratches  
15 because it's rubbing against the inside of the gun; is that  
16 right?

17 A. No, it wouldn't get scratched any crazy way just by  
18 putting it into the magazine well.

19 Q. But you get some rubbing of friction as it goes --

20 A. Rubbing and friction, yes.

21 MR. GARRITY: I have no further questions.

22 THE COURT: Okay. You may step down.

23 MR. WORTMANN: I call Special Agent Mattheu Kelsch to  
24 the stand, your Honor.

25 MATTHEU KELSCH, having been duly sworn by the Clerk,

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WORTMANN:

4 Q. Sir, could you tell us your name, please.

5 A. Sure. Good afternoon. My name is Mattheu Kelsch.

6 Q. Could you spell both sides of that, please, for us.

7 A. Sure. It's spelled a little differently, it's Mattheu,  
8 M-a-t-t-h-e-u, and the last name is Kelsch, K-e-l-s-c-h.

9 Q. What do you do for a living, Mr. Kelsch?

10 A. I'm employed as a special agent with the Bureau of  
11 Alcohol, Tobacco, Firearms and Explosives or more commonly  
12 known as ATF.

13 Q. For how long have you worked at ATF?

14 A. I've been with ATF for approximately 14 years now.

15 Q. And could you tell us where you're assigned and what your  
16 responsibilities are?

17 A. I'm currently assigned to our Boston, Massachusetts group,  
18 and that group is primarily tasked with firearm investigations  
19 as well as arson and explosive investigations within the City  
20 of Boston itself.

21 Q. Now, in addition to your primary duties as an arson and  
22 firearms investigator, do you have any other distinct  
23 responsibilities within the Boston group of the ATF?

24 A. I do. I have a number of collateral duties that I hold  
25 within ATF. I am part of our SWAT team and special response

1 team, I do analysis of computers and cell phones for forensic  
2 analysis, and I also do something which we call interstate  
3 nexus determination for firearms and ammunition.

4 Q. Could you describe for the Court what interstate nexus  
5 examinations are?

6 A. So interstate examination, to kind of put it in easy  
7 terms, would be where a certain Special Agent who's received  
8 training would look primarily at firearms and ammunition and  
9 through their training, experience and knowledge of that be  
10 able to look at the markings and understand what are on those  
11 particular items to determine where, in fact, they were  
12 manufactured.

13 Q. Have you received training in order to do interstate nexus  
14 examinations?

15 A. Yes, I have.

16 Q. Could you describe that, please.

17 A. Every agent when they get on in our regular academy,  
18 six-month academy, takes firearms-related courses and whatnot,  
19 firearms handling and some basic stuff.

20 Later on in our ATF academy, you receive some more  
21 in-depth training regarding firearms, their markings and  
22 whatnot. After you've been on the job for a certain amount of  
23 time, you can apply to go to our nexus determination school.  
24 When you do that, you're given study material to look at ahead  
25 of time and memorize. You're also asked to put together a

1       packet explaining why you'd like to go ahead and do these types  
2       of examinations. If you're chosen to do so, you're brought  
3       down to our national firearms technology branch, which is  
4       located in West Virginia. When you arrive at that particular  
5       course, you're given --

6       Q.      Let me interrupt you. Were you so chosen to go to that?

7       A.      Yes, I was.

8       Q.      Thank you.

9       A.      So once you attend that course, you're given a test on the  
10      study materials you were given. If you pass that test, you're  
11      allowed to go on and take the week-long course. That  
12      particular course specifically goes into the manufacture of  
13      firearms, how they're manufactured, the different types of  
14      firearms out there.

15                  It specifically looks at the markings that are placed  
16      on firearms. There's mandatory markings that are required to  
17      be put on each firearm. On a separate segment, you're also  
18      taught in the manufacturing techniques of ammunition, what the  
19      components of ammunition are, and there are certain markings  
20      that are placed on ammunition.

21                  There's a testing phase where you're given firearms  
22      and ammunition during the course of the study to make sure that  
23      you're proficient in doing so. There's also a massive firearms  
24      library that we have. It's kind of like a regular library, but  
25      instead of books, we have firearms, and there's over 10,000

1 firearms catalogued within ATF. They like to have a copy of  
2 one of everything, if they can. We're allowed to spend days in  
3 there just familiarizing with the types of firearms and looking  
4 at them.

5 At the conclusion of the course, you're actually given  
6 a second test where you're given a written test and then  
7 firearms to examine and ammunition, and if you pass that test,  
8 then you're allowed go ahead and do these interstate nexus  
9 determinations for ATF.

10 Q. And was there any further class work or training that you  
11 were given in connection with your work as an interstate  
12 commerce expert?

13 A. Yes. Approximately a year later, I was able to attend our  
14 advanced nexus course. It goes over a lot of the same  
15 information, but this one rather than being in the classroom is  
16 out in the field, and it's run throughout New England, and  
17 during the course of it, we're allowed to tour approximately 10  
18 firearms manufacturers.

19 New England is very heavy for firearms manufacturers,  
20 and we go to the facilities, and we see the different types of  
21 production, how firearms are made, there's different ways.  
22 They specifically go over how these particular markings are  
23 placed on firearms, and we're able to go more in-depth into  
24 that type of knowledge.

25 Q. Do you also maintain a library in Boston of

1 firearm-related literature?

2 A. Yes, I do. I have my own personal library which contains  
3 a lot of the commonly referenced firearms books, especially for  
4 the more popular manufacturers, and ATF also maintains aside  
5 from their own firearms library an online catalogue of  
6 information for both the ammunition and firearms.

7 Q. Could you explain to the jury how it is that you proceed  
8 on an interstate nexus examination on a firearm?

9 A. Sure, so usually I'm contacted by an investigator that's  
10 working a case, when I'm contacted I'll go and either look at  
11 that firearm or the firearm will be within ATF's custody.  
12 Either way, when I look at that particular firearm, I look at  
13 it for particular markings.

14 As I mentioned before, since 1968, there's been  
15 certain markings that have to be placed on a firearm  
16 specifically. Before that they didn't exist, so it's tougher  
17 to look at a firearm prior to 1968, but since then the  
18 manufacturer has to have their name placed on the firearm  
19 itself.

20 There has to be the calibre ammunition that that  
21 firearm uses, there has to be a city and state either where  
22 that firearms manufacturer is based or where the firearm was  
23 actually manufactured. There has to be a model designation,  
24 and that's only if the company has a model name. If they do,  
25 that's supposed to be placed on there, and there has to be a

1 unique serial number for that firearm, and that unique serial  
2 number has to be placed on the frame of the firearm, which is  
3 kind of the body of the firearm. The rest of that information  
4 can be placed anywhere else on the firearm.

5 Q. Let me ask you, Special Agent Kelsch, whether you were  
6 asked to do an interstate -- well, strike that for a second.  
7 Can you tell us how many interstate nexus examinations you have  
8 actually performed?

9 A. Yes, I've done well over 140 examinations, and many of  
10 those examinations would include multiple firearms and hundreds  
11 or thousands of rounds of ammunition, depending.

12 Q. Can you tell us whether any of those examinations involve  
13 firearms manufactured by Sturm, Ruger?

14 A. Yes, I've looked at least 25 to 30 firearms that were  
15 produced by Ruger.

16 Q. Have you been qualified as an expert to give testimony in  
17 federal court regarding interstate nexus examinations?

18 A. Yes, I have.

19 Q. Approximately how many occasions?

20 A. Approximately 10 times now.

21 Q. Were you asked to do work in this case?

22 A. Yes, I was.

23 Q. And specifically were you asked to perform an examination  
24 with respect to the firearm that's in front of you that's  
25 marked as Exhibit 6.1?

1 A. Sure. Give me one second. Yes, I was specifically asked  
2 to look at this firearm here that's marked as an exhibit.

3 Q. What kind of firearm is it?

4 A. This is a firearm that was made by the Sturm, Ruger &  
5 Company. It's a Model Number P95DC.

6 Q. And can you tell us, sir, based on your training and  
7 experience where that particular gun was manufactured?

8 A. Yes, I can. I mentioned before when I was talking about  
9 markings that you have to have on a firearm, so either the  
10 manufacturer's actual place of manufacturer has to be on there  
11 or their headquartered area.

12 A lot of these older firearms manufacturers like  
13 Sturm & Ruger or Colt or some of the names that have been  
14 around for a long time are known to be from a certain area, so  
15 Sturm & Ruger, their main plant was always located in  
16 Southport, Connecticut. They also have manufacturing  
17 facilities in Newport, New Hampshire and in Prescott, Arizona.

18 All of their firearms of this type, so any  
19 semiautomatic center-fire calibre pistol that they produced was  
20 made in Prescott, Arizona, so this particular firearm would  
21 have been manufactured in Prescott, Arizona, but it is marked  
22 for Southport, Connecticut, and they would have received what  
23 we call a variance from ATF to put that marking on there, but  
24 we have that on file.

25 Q. Let me ask you, has Sturm & Ruger ever had any

1 manufacturing facilities in Massachusetts?

2 A. They have not, no.

3 Q. Therefore, do you have an opinion to a reasonable degree  
4 of special certainty as to whether that gun crossed an  
5 interstate line or an international boundary prior to being  
6 seized in Mattapan, Massachusetts on September 17th, 2012?

7 A. Yes, being that it was manufactured originally in  
8 Prescott, Arizona, if it was possessed anywhere in the  
9 Commonwealth of Massachusetts, it would have traveled in  
10 interstate commerce.

11 Q. Okay. Were you also asked to examine the items that are  
12 contained in 6.2, 11 rounds of ammunition and 6.3, 5 rounds of  
13 ammunition?

14 A. Yes. Just give me one moment, please.

15 Q. Sure.

16 A. Okay.

17 Q. Were you asked to examine these as well?

18 A. Yes, I was.

19 Q. And can you describe how you do an interstate nexus  
20 examination with respect to ammunition?

21 A. Yes. So when I look at ammunition, and ammunition is  
22 always the kind of same components, you have a little shell  
23 casing at the back side, you have a primer in the bottom of  
24 that shell casing that actuates it, there's gun powder on the  
25 inside, and there's a bullet or a projectile on the front of

1       it, so when I'm looking at ammunition, on the bottom side of  
2       the particular casing, there's usually markings from a  
3       manufacturer, and the reason they put that there is obviously  
4       they want to know what they made, and obviously they want to  
5       mark it with the type of calibre it is.

6                 It makes it easier for both the manufacturer and the  
7       user to know what type of calibre it is, make sure you're using  
8       the correct ammunition for the correct type of firearm, so that  
9       little writing on there is called a head stamp, that's what we  
10      refer to it, and that head stamp is made with something called  
11      a bunter that the manufacturers have.

12               These bunters are very tough to make. They are made  
13      out of a very, very, very hard metal because they're constantly  
14      pressing into the brass here, so that bunter leaves a very  
15      specific type of head stamp as we call it on the ammunition.

16   Q.   Now, in examining the 16 rounds of ammunition that are 6.2  
17      and 6.3, how many different head stamps did you find?

18   A.   There were three different head stamps within this  
19      ammunition here.

20   Q.   And what head stamp was most prevalent and how many rounds  
21      of ammunition did it include?

22   A.   The head stamp that was most prevalent would be in capital  
23      letters W-I-N and then 9mm, mm stands for millimeter, and then  
24      and Luger, L-u-g-e-r, and Luger is just kind of a trade name  
25      for 9 millimeter. They call it Luger.

1 Q. Based on your training and experience, sir, can you tell  
2 us where those nine rounds of ammunition were manufactured?

3 A. Yes. Winchester has always manufactured their ammunition  
4 in East Alton, Illinois.

5 Q. Has Winchester ever had a facility, a manufacturing  
6 facility, for ammunition in Massachusetts?

7 A. No, they have not.

8 Q. So do you have -- well, strike that. What was the next  
9 most prevalent head stamp that you found in the 16 rounds  
10 contained in Exhibit 6.2 and 6.3?

11 A. Sure. Give me one second here. So the next most  
12 prevalent would have been five rounds, and that particular head  
13 stamp says PMC, but the M actually looks like an upside down W,  
14 it's written a little funny, and then that is followed by once  
15 again 9 millimeter Luger, which I described before.

16 Q. Based on your training and experience, can you tell us  
17 where that five rounds were manufactured?

18 A. Yes. That head stamp is commonly used by a company called  
19 Poongsan Metal Corporation, which is a firearms manufacturer  
20 based out of Seoul, South Korea.

21 Q. And have they ever had any manufacturing facilities in  
22 Massachusetts?

23 A. They have not, no.

24 Q. And what about the remaining cartridges, what head stamp  
25 did they contain?

1       A.     So the final head stamp would have been an R with a small  
2 dash followed by a P, and then once again 9 millimeter Luger on  
3 the bottom, which I described before.

4       Q.     And can you tell us based on that head stamp where they  
5 would have been manufactured?

6       A.     Yes, that designation R-P is a very common designation  
7 used by the Remington Peterson Company, and they've had two  
8 manufacturing facilities, one that has since closed, but their  
9 main facility now is in Anoka, Minnesota, and then they also  
10 did have a facility that closed in the late '80s in  
11 Connecticut.

12      Q.     Has Remington ever maintained a manufacturing facility for  
13 ammunition in Massachusetts?

14      A.     No, they have not.

15      Q.     So, based on the examination you did and your training and  
16 experience, can you tell us whether you have an opinion to a  
17 reasonable degree of professional certainty as to whether or  
18 not all 16 rounds of ammunition traveled in interstate  
19 commerce, that is, crossed an interstate line or international  
20 boundary between the date of manufacturer and being seized in  
21 Massachusetts on September 17th, 2012?

22      A.     Yes, knowing the three different manufacturing locations  
23 for this ammunition, if they were possessed in the Commonwealth  
24 of Massachusetts, they would have traveled in domestic or  
25 foreign commerce.

1                   MR. WORTMANN: Thank you, sir, I have no further  
2 questions.

3                   THE COURT: Mr. Garrity, any questions?

4                   MR. GARRITY: I have no questions.

5                   THE COURT: Thank you, you may step down.

6                   MR. WORTMANN: Your Honor, that concludes all the  
7 witnesses I had scheduled to go for today.

8                   THE COURT: Let me see counsel at sidebar.

9                   (SIDEBAR CONFERENCE WAS HELD AS FOLLOWS:)

10                  THE COURT: How many more witnesses do you have?

11                  MR. WORTMANN: I've got two more witnesses, your  
12 Honor, the first, the people involved in processing of the  
13 fingerprints and the actual person who do the comparison work,  
14 total, I suspect maybe an hour of testimony.

15                  THE COURT: Direct testimony, you're talking?

16                  MR. WORTMANN: Direct, yes.

17                  THE COURT: Is there going to be a defense case?

18                  MR. GARRITY: No, I don't think so, Judge.

19                  THE COURT: So it looks like we ought to probably tell  
20 the jury they are probably going to get the case tomorrow --

21                  MR. GARRITY: Right.

22                  THE COURT: -- in all likelihood, so I'll alert them  
23 to that, and then I'll send them home and we'll talk about what  
24 the case is going to look like.

25                  MR. WORTMANN: Thank you, your Honor.

1 (SIDEBAR CONFERENCE WAS CONCLUDED)

2 THE COURT: Ladies and gentlemen of the jury, this  
3 comes under the heading of good news in the sense that we're  
4 quite a bit ahead of where we expected to be. I'm going to let  
5 you go for the day. The lawyers expect that you will get the  
6 case tomorrow, not on Wednesday, so that, again, you'll get it  
7 a little earlier than perhaps we had anticipated.

8 You should expect tomorrow to be prepared to be here  
9 all day. You may not need that amount of time, but once you  
10 get the case, it's entirely up to you how much or how little  
11 time you want to take to make your decision, but you should at  
12 least anticipate in terms of making your arrangements that you  
13 might be here all day.

I don't know when you'd get the case, but my guess is probably late morning, 12:00, somewhere in that time frame. You don't have to worry about lunch. We'll provide that for you. I do ask that, again, I know some of you are coming very long distances, and it's somewhat chaotic in this building because of the other case, but I ask that you make every effort to be here early so we can start on time and get you the case and get you out of here once you're ready to make your decision, so thank you for your patience today.

23                   Please remember my caution not to discuss the case  
24 among yourselves or with anyone else, and I will see you  
25 tomorrow morning, and hopefully we'll start at 9:00 a.m. sharp.

1                   THE CLERK: All rise for the jury.

2                   (JURORS EXITED THE COURTROOM.)

3                   THE COURT: All right. I think we need to have at  
4 least our preliminary charge conference this afternoon. I have  
5 a 2:00 and then a 3:15 revocation hearing, which I don't think  
6 will be terribly long. I propose that we reconvene at 4:00,  
7 and that way I can have a draft to you of the proposed jury  
8 instructions, and, obviously, the final decisions will be made  
9 after the close of the evidence, but we can at least make  
10 headway on that.

11                  MR. GARRITY: Judge, the only scheduling issue we  
12 have, and I don't think it's really going to be a problem, but  
13 I have a 3:00 in front of Judge Young. We're going to  
14 stipulate the violation and argue sentencing.

15                  THE COURT: If you're delayed, we'll wait for you, I  
16 guess, we'll just have to handle it that way.

17                  MR. WORTMANN: Your Honor, I have a 3:15 with you, so  
18 you know where I'll be.

19                  THE COURT: Let's try it that way, and, again, I don't  
20 know that there's that much to discuss, but I think it's useful  
21 to do it today rather than tomorrow. Thank you.

22                  (Whereupon, the hearing was adjourned at  
23 12:48 p.m.)

24

25

1 C E R T I F I C A T E  
23 UNITED STATES DISTRICT COURT )  
4 DISTRICT OF MASSACHUSETTS ) ss.  
5 CITY OF BOSTON )  
6  
78 I do hereby certify that the foregoing transcript,  
9 Pages 1 through 159 inclusive, was recorded by me  
10 stenographically at the time and place aforesaid in Criminal  
11 Action No. 13-10048-FDS, UNITED STATES OF AMERICA vs.  
12 KING BELIN and thereafter by me reduced to typewriting and is a  
13 true and accurate record of the proceedings.

14 Dated this 6th day of January, 2015.

15

16 s/s Valerie A. O'Hara  
17 \_\_\_\_\_

18 VALERIE A. O'HARA

19 OFFICIAL COURT REPORTER

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